A

COLLECTION

OF

STATUTES

CONNECTED WITH THE

GENERAL ADMINISTRATION OF THE LAW;

ARRANGED

ACCORDING TO

THE ORDER OF SUBJECTS,

WITH NOTES.

BY

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VOL. IV.

LONDON,

PRINTED FOR J. BUTTERWORTH AND SON, FLEET-STREET,
AND J. COOKE, ORMOND-QUAY, DUBLIN.

1817.

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Part IV. Class XX.

ACTIONS AGAINST JUSTICES OF PEACE AND OTHER OFFICERS.

No. 1.

7 James I. c 5.—An Act for Ease in pleading troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office.

No. 1. 7 James I. c. 5. The Plea of an Officer impleaded for the Execution of his Office.

'FOR Ease in pleading against many causeless and contentious Suits which have been, and daily are commenced 'and prosecuted against Justices of Peace, Mayors, or Bailiffs 'of Cities and Towns Corporate, Headboroughs, Port-Reves, 'Constables, Tythingmen, Collectors of Subsidies and Fifteens, who for due Execution of their Office have been 'troubled and molested, and still are like to be troubled and 'molested, by evil-disposed contentious Persons, to their 'great Charge and Discouragement in doing of their Offices;' Be it therefore enacted by our Sovereign Lord the King, and by the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Action, Bill, Plaint, or Suit, upon the Case, (1.) Trespass, Battery, or false Imprisonment, shall be brought after Forty Days next after the End of this Session of Parliament, in any of his Majesty's Courts at *Westminster* or elsewhere, against any Justice of Peace, Mayor, or Bailiff of City or Town Corporate, Headborough, Port-Reve, Constable, Tythingman, Collector of Subsidy or Fifteens, for or concerning any Matter, Cause, or Thing, by them or any of them done by virtue or reason of their or any of their Office or Offices, That it shall be lawful to and for every such Justice of Peace, Mayor, Bailiff, Constable, or other Officer or Officers before named, and all others which in their Aid or Assistance, or by their Commandment, shall do any Thing touching or

(1.) This Act and 21 Jac. c. 12, sec. 3, only extend to Actions of Tort, not to Assumpsit, brought against an Overseer for Maintenance of a Pauper; Atkins *v.* Banwell, 2 East, 92.

No. 1.
7 James I. c. 5.
Defendant allowed double Costs of Suit.

concerning his or their Office or Offices, to plead the general Issue, that he or they are not guilty, and to give such Special Matter in Evidence to the Jury which shall try the same; which Special Matter being pleaded had been a good and sufficient Matter in Law to have discharged the said Defendant or Defendants of the Trespass, or other Matter laid to his or their Charge: And that if the Verdict shall pass with the said Defendant or Defendants in any such Action, or the Plaintiff or Plaintiffs therein become nonsuit, or suffer any Discontinuance thereof, That in every such Case the Justice or Justices, or such other Judge before whom the said Matter shall be tried, shall by Force and Virtue of this Act allow unto the Defendant or Defendants his or their double Costs, which he or they shall have sustained by reason of their wrongful Vexation in Defence of the said Action or Suit; for which the said Defendant or Defendants shall have like Remedy as in other Cases where Costs by the Laws of this Realm are given to the Defendants.

Continuance of this Act.

And this Act to continue for Seven Years, and from thence to the End of the next Parliament after the said Seven Years.

(2) To entitle a Defendant to double Costs under this Act, there must be a Certificate from the Judge. Grimsby v. Holloway, Doug. 30. It must be granted either at the Trial or after, Harper v. Carr, 7 T. R. 448. But such Certificate is not necessary, if the Fact appear on a special Verdict, Rann v. Pickin, Doug. 309 n. See R. v. Pollard, 1 Str. 49, Dewsnap v. [illegible], 2 Str. 971.

It may be convenient to take this Opportunity of observing, that Double Costs are held to mean Common Costs with the Addition of One-half; Treble Costs, Common Costs with the Addition of Three-fourths. [illegible], if Single Costs are 20s. Double Costs are 30s. and Treble Costs 35s.

No. 2.

21 James I. c. 12.—An Act to enlarge and make perpetual the Act made for Ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the Seventh Year of his Majesty's most happy Reign.*

No. 2.
21 James I. c. 12.
The Statute of 7 Jac. I. c. 5. enlarged and made perpetual.

'WHEREAS an Act, intituled, *An Act for Ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the Seventh Year of his Majesty's most happy Reign of* England, was made to continue but for Seven Years, 'and from thence to the End of the next Parliament, after the 'said Seven Years, which by Experience hath since been 'found to be a good and profitable Law;'

II. Be it therefore enacted by the King's most Excellent Majesty, the Lords Spiritual and Temporal, and the Com-

* See Notes to the last Number.

mons, in this present Parliament assembled, and by the Authority of the same, That the said Act shall, from and after the End of this present Session of Parliament, be perpetual, and have Continuance for ever.

No. 2.
21 James I.
c. 12.

III. And be it further enacted by the Authority aforesaid, That all Churchwardens, and all Persons called Sworn Men, executing the Office of Churchwardens, and all Overseers of the Poor, and all others which in their Aid and Assistance, or by their Commandment, shall do any Thing touching or concerning his or their Office or Offices, shall hereafter be enabled to receive and have such Benefit and Help by virtue of the said Act, to all Intents, Constructions, and Purposes, as if they had been specially named therein.

Churchwardens and Overseers comprehended within 7 Jac. I. c. 5.

'IV. And whereas notwithstanding the said Statute, the 'Plaintiff is at Liberty to lay his Action which he shall bring 'against any Justice of Peace, or other Officer, in any foreign 'County at his Choice, which hath proved very inconvenient 'unto sundry of the Officers and Persons aforesaid, that have 'been impleaded by some contentious and troublesome Persons 'in Countries far remote from their Places of Habitations:'

V. Be it therefore further enacted by the Authority aforesaid, That if any Action, Bill, Plaint, or Suit upon the Case, Trespass, Battery, or false Imprisonment, shall be brought after the End of this present Session of Parliament, against any Justice of Peace, Mayor or Bailiff of City, or Town Corporate, Headborough, Port-Reve, Constable, Tything-man, Collector of Subsidy or Fifteens, Churchwardens, and Persons called Sworn Men, executing the Office of Churchwarden or Overseer of the Poor, and their Deputies, or any of them, or any other which in their Aid and Assistance, or by their Commandment, shall do any thing touching or concerning his or their Office or Offices, for or concerning any Matter, Cause, or Thing, by them or any of them done by virtue or reason of their or any of their Office or Offices, that the said Action, Bill, Plaint, or Suit, shall be laid within the County where the Trespass or Fact shall be done and committed, and not elsewhere; and that it shall be lawful to and for all and every Person and Persons aforesaid, to plead thereunto the General Issue, that he or they are not guilty, and to give such special Matter in Evidence to the Jury which shall try the same, as in or by the said former Act is limited or declared: And that if upon the Trial of any such Action, Bill, Plaint, or Suit, the Plaintiff or Plaintiffs therein shall not prove to the Jury which shall try the same, that the Trespass, Battery, Imprisonment, or other Fact or Cause of his, her, or their such Action, Bill, Plaint, or Suit, was or were had, made, committed, or done, within the County wherein such Action, Bill, Plaint, or Suit shall be laid: that then, in every such Case, the Jury which shall try the same, shall find the Defendant and Defendants in every such Action, Bill, Plaint, or Suit, not guilty, without having any Regard or Respect to any Evidence given by the Plaintiff or Plaintiffs therein, touching the Trespass, Battery,

An Action brought against an Officer shall be laid in the County where the Fact was committed.

No. 2.
21 James I. c. 12.
The Defendant shall have double Costs.

Imprisonment, or other Cause for which the same Action, Bill, Plaint, or Suit, is or shall be brought: And if the Verdict shall pass with the Defendant or Defendants in any such Action, Bill, Plaint, or Suit, or the Plaintiff or Plaintiffs therein become nonsuit, or suffer any Discontinuance thereof, that in every such Case the Defendant or Defendants shall have such Double Costs, and all other Advantages and Remedies, as in and by the said former Act is limited, directed, or provided.

No. 3.

24 George II. c. 44.—An Act for the rendering Justices of the Peace more safe in the Execution of their Office; and for indemnifying Constables and others acting in obedience to their Warrants.

No. 3.
24 George II. c. 44.
No Writ to be sued against any Justice for what he shall do in the Execution of his Office, 'till Notice given him;

'WHEREAS Justices of the Peace are discouraged in the 'Execution of their Office by vexatious Actions brought 'against them for or by reason of small and involuntary Errors 'in their Proceedings: And whereas it is necessary that they 'should be (as far as is consistent with Justice, and the Safety 'and Liberty of the Subjects over whom their Authority ex'tends) rendered safe in the Execution of the said Office and 'Trust: And whereas it is also necessary that the Subjects 'should be protected from all wilful and oppressive Abuse of 'the several Laws and Statutes committed to the Care and 'Execution of the said Justices of the Peace;' Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of *June* one thousand seven hundred and fifty-one, no Writ shall be sued out (1) against, nor any Copy of any Process, at the Suit of a Subject, shall be served on any Justice of the Peace for any Thing by him done in the Execution of his Office, (2) until Notice in Writing of such intended Writ (3) or Process shall have been delivered to him, or left at the

(1.) After opposite Decisions upon the Subject it is now settled that the Act does not extend to Actions of Replevin. See Fletcher *v.* Wilkins, 6 East, 283, where the Question is very fully discussed.

(2.) In Weller *v.* Toke, 9 East, 364, this was ruled to extend to an Action against a Justice of Peace, for a Commitment without the Concurrence of another Justice, in a Case where such Concurrence was necessary. And by Lord Ellenborough—"It is not denied that the Defendant had Authority to act as a Magistrate upon the subject Matter of the Complaint brought before him, though he could not act alone. Though the Act of Commitment, therefore, cannot be said to be done by virtue of his Office, yet the subject Matter was within his Jurisdiction, and he intended to act as a Magistrate at the Time, however mistakenly. The very Object of the Legislature, in requiring the Notice to be given was, to enable the Magistrate to tender Amends as for the Wrong done, contemplating him as a Wrong-doer. If this had been an Act wholly alien to his Jurisdiction, I should have said that he acted without the Protection of the Law."

(3.) The Notice must specify the particular Writ intended to be sued out; Lovelace *v.* Curry, 7 T. R. 631.

No. 3.
24 George II. c. 44.

usual Place of his Abode, by the Attorney or Agent for the Party who intends to sue or cause the same to be sued out or served, at least one Calendar Month (4) before the suing out or serving the same; in which Notice shall be clearly and explicitly contained the Cause of Action (5) which such Party hath or claimeth to have against such Justice of the Peace; on the Back of which Notice shall be indorsed the Name of such Attorney or Agent, together with the Place of his Abode, (6) who shall be intitled to have the Fee of twenty Shillings for the preparing and serving such Notice, and no more.

he may tender Amends;

II. And be it further enacted, That it shall and may be lawful to and for such Justice of the Peace, at any Time, within one Calendar Month after such Notice given as aforesaid, to tender Amends to the Party complaining, or to his or her Agent or Attorney; and in case the same is not accepted, to plead such Tender in Bar to any Action to be brought against him, grounded on such Writ or Process, together with the Plea of Not Guilty, and any other Plea, with the Leave of the Court; and if upon Issue joined thereon the Jury shall find the Amends so tendered to have been sufficient, then they shall give a Verdict for the Defendant; and in such Case, or in case the Plaintiff shall become nonsuit, or shall discontinue his or her Action, or in case Judgment shall be given for such Defendant or Defendants upon Demurrer, such Justice shall be intitled to the like Costs as he would have been intitled unto, in case he had pleaded the General Issue only; and if upon Issue so joined the Jury shall find that no Amends were tender-

and plead the same in Bar, &c.

In Daniel *v.* Wilson, 5 T. R. 1, (which depended upon Stat. 23 George III. c. 70, s. 30, post., respecting Officers of Excise) an Action of Assault was brought against an Officer who acted upon a sudden Surprise, the Plaintiff being supposed to be engaged in a smuggling Transaction, and it was ruled that he was entitled to the Benefit of the Act. And per Curiam—"The Act was clearly intended to protect such Officers, as acting in the *bona fide* Discharge of their Duty were inadvertently guilty of Excesses beyond the strict Line of their Duty, and though the Defendant's Conduct was perhaps too hasty, yet it manifestly appears, that he acted in the supposed Execution of his Office, however illegally; and that is sufficient to bring the Case within the Protection of the Statute." The Lord of a Manor, who is also a Justice of Peace, is entitled to Notice in an Action for taking away a Gun from an unqualified Person, as it will be presumed that he acted as a Justice. Biggs *v.* Evelyn, 2 H. B. 114. And in Greenaway *v.* Hunt, 4 T. R. 555, Lord Kenyon said—"It has been frequently observed by the Courts, that the Notice directed to be given to Justices, and other Officers, is of no Use to them when they have acted within the strict Line of their Duty, and was only required for the Purpose of protecting them when they intended to act within it, but by Mistake exceeded it."

(4.) The Day of Service is included in the Time. Notice given on the 28th. of April of an Action commenced on the 28th. of May is sufficient; Castle *v* Burditt, 3 T. R. 623.

(5.) Notice of an Action on the Case for false Imprisonment is not sufficient, when the Action is brought in Trespass, per Yates J.; Strickland *v.* Ward, 7 T. R. 631.

(6.) Given under my Hand *at Durham*, is not a sufficient Notice of a Residence at Durham. The Statute has presented a Form which must be implicitly followed, and it admits of no Equivalent; Taylor *v.* Fenwick, cited 7 T. R. 635; 3 B. and P. 553, n. An Indorsement, "J. S. of Birmingham," is sufficient; Osborn *v.* Gough, 3 B. and P. 551.

No. 3.
24 George II. c. 41.

ed, or that the same were not sufficient, and also against the Defendant or Defendants on such other Plea or Pleas, then they shall give a Verdict for the Plaintiff, and such Damages as they shall think proper, which he or she shall recover, together with his or her Costs of Suit.

Plaintiff not recover without Proof of Notice.

III. And be it further enacted, That no such Plaintiff shall recover any Verdict against such Justice in any Case where the Action shall be grounded on any Act of the Defendant, as Justice of the Peace, unless it is proved upon the Trial of such Action, that such Notice was given as aforesaid; but in Default thereof such Justice shall recover a Verdict and Costs as aforesaid.

Justice may pay Money into Court.

IV. And be it further enacted by the Authority aforesaid, That in case such Justice shall neglect to tender any Amends, or shall have tendered insufficient Amends, before the Action brought, it shall and may be lawful for him, by Leave of the Court where such Action shall depend, at any Time before Issue joined, to pay into Court such Sum of Money as he shall see fit; whereupon such Proceedings, Orders, and Judgments shall be had, made, and given in and by such Court, as in other Actions where the Defendant is allowed to pay Money into Court.

V. And be it further enacted, That no Evidence shall be permitted to be given by the Plaintiff on the Trial of any such Action as aforesaid, of any Cause of Action, except such as is contained in the Notice hereby directed to be given.

Action not to be brought against Constable 'till Demand made of Copy of Warrant, &c.

VI. And be it further enacted by the Authority aforesaid, That from and after the said twenty-fourth Day of *June* one thousand seven hundred and fifty-one, no Action (7) shall be brought against any Constable, Headborough, or other Officer, (8) or against any Person or Persons acting by his Order and in his Aid, for any Thing done in obedience (9) to any Warrant, (10) under the Hand or Seal of any Justice of the Peace, until Demand hath been made or left at the usual Place of his Abode, by the Party or Parties intending to bring such Ac-

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(7.) As to Replevin, see No. 1, supra. In Feltham *v.* Terry, B. N. P. 24, it was held that the Statute only extends to Actions of Tort, and not to Assumpsit, to recover Money levied on a Conviction which has been quashed; but see Greenaway *v.* Hunt, 4 T. R. 553, mentioned in Notes to the next Number. See also Wallace *v.* Smith, 5 East, 115.

(8.) An Overseer executing a Warrant of Distress for a Poor's Rate is an Officer within the Act; Nutting *v.* Jackson, B. N. P. 24; Harper *v.* Carr, 7 T. R. 270.

(9.) An Officer is not within the Act who arrests a wrong Person; Money *v.* Leach, 3 Bur. 1742; or who executes the Warrant in an improper Manner, as by breaking open Doors on a Warrant to distrain for a Poor Rate; Bell *v.* Oakley, 2 M. and S. 259. Per Dampier J.—"Where the Justice cannot be liable, the Officer is not within the Protection of the Statute."

(10.) If the Warrant by a Justice of the County is executed in a Franchise out of the Justice's Jurisdiction, the Officer is not entitled to the Benefit of the Act; Milton *v.* Green, 5 East, 233. The Constable is entitled to the Benefit of the Act whether the Warrant be legal or otherwise. So, if under a Warrant to seize stolen Goods of a certain Kind, he seize Goods which do not appear to have been stolen; Price *v.* Messenger, 2 B. and P. 158. See Entick *v.* Carrington, 2 Wils. 286.

No. 3. 24 George II. c. 44.

tion, or by his, her, or their Attorney or Agent, in Writing,(11) signed by the Party (12) demanding the same, of the Perusal and Copy of such Warrant, and the same hath been refused or neglected for the Space of six (13) Days after such Demand; and in case after such Demand and Compliance therewith, by shewing the said Warrant to, and permitting a Copy to be taken thereof by the Party demanding the same, any Action shall be brought against such Constable, Headborough, or other Officer, or against such Person or Persons acting in his Aid for any such Cause as aforesaid, without making the Justice or Justices who signed or sealed the said Warrant, Defendant or Defendants, that on producing or proving such Warrant at the Trial of such Action, the Jury shall give their Verdict for the Defendant or Defendants, notwithstanding any Defect of Jurisdiction in such Justice or Justices; and if such Action be brought jointly against such Justice or Justices, and also against such Constable, Headborough, or other Officer, or Person or Persons acting in his or their Aid as aforesaid, then on Proof of such Warrant the Jury shall find for such Constable, Headborough, or other Officer, and for such Person and Persons so acting as aforesaid, notwithstanding such Defect of Jurisdiction as aforesaid; and if the Verdict shall be given against the Justice or Justices, that in such Case the Plaintiff or Plaintiffs shall recover his, her, or their Costs against him or them, to be taxed in such Manner by the proper Officer, as to include such Costs as such Plaintiff or Plaintiffs are liable to pay to such Defendant or Defendants for whom such Verdict shall be found as aforesaid.

Action wilfully committed, Double Costs.

VII. Provided always, That where the Plaintiff in any such Action against any Justice of the Peace shall obtain a Verdict, in case the Judge before whom the Cause shall be tried, shall in open Court certify on the Back of the Record, that the Injury for which such Action was brought, was wilfully and maliciously committed, the Plaintiff shall be intitled to have and receive Double Costs of Suit.

Limitation of Actions.

VIII. Provided also, and be it enacted by the Authority aforesaid, That no Action shall be brought against any Justice of the Peace for any Thing done in the Execution of his Office, or against any Constable, Headborough, or other Officer, or Person acting as aforesaid,(14) unless commenced within six Calendar Months after the Act committed.(15)

(11.) If there are two Copies, the one served and the other kept, the Production of the latter is sufficient, without giving Notice to produce the other; Jory v. Orchard, 2 B and P. 39.

(12.) The Signature of the Attorney on Behalf of the Party is sufficient; Jory v Orchard, 2 B and P. 39

(13) If the Copy is delivered before the Commencement of the Action, although after the Expiration of six Days from the Demand, it is sufficient, Jones v. Vaughan, 5 East, 445.

(14) A Constable acting without Warrant is not within the Provision; Postlethwaite v Gibson, 3 Esp. Rep 226.

(15.) A Writ sued out within Time, but not served, cannot be connected with another, sued out after the Time; Stanway v Perry, 2 B and P 157. The Writ must be sued out within six Months from the Time of giving

Notice, although the Injury (false Imprisonment) continued down to the Time of suing out the second Writ The Notice fixes the Plaintiff to the Trespass on which he means to proceed; Weston *v.* Fourmier, 14 East, 491. But a continued Imprisonment is one entire Trespass, and the Action may be brought within six Months after its Termination; Pickersgill *v.* Palmer, B. N. P. 24.

No. 4.

P. 23 George III. c. 70.—An Act for the more effectual preventing the illegal Importation of foreign Spirits, and for putting a Stop to the private Distillation of *British*-made Spirituous Liquors; * * * * * * * * * and for preventing vexatious Actions against Officers of Excise acting in pursuance of the Authority given by Excise Statutes.

No. 4. 23 George III. c. 70. If the Claimer gain a Verdict, and it appear to the Judge that the Officer had probable Cause of Seizure, the Claimant shall not be intitled to Costs, &c.

XXIX. AND be it further enacted by the Authority aforesaid, That in case any Information or Suit shall be commenced and brought to Trial, on account of the Seizure of any Goods, Merchandizes, or Commodities whatsoever, seized as forfeited by any Act or Acts of Parliament now in Force, or hereafter to be made, relating to his Majesty's Revenue of Excise or Inland Duties, or of any Ship, Vessel, or Boat, or of any Horses or other Cattle, or of any Carriages used or employed in removing or carrying the same, wherein a Verdict shall be found for the Claimer thereof; and it shall appear to the Judge or Court before whom the same shall be tried, that there was a probable Cause of Seizure, the Judge or Court before whom the same shall be tried, shall certify on the Record that there was a probable Cause for the Prosecutor seizing the said Goods, Merchandizes, Commodities, Ships, Vessels, Boats, Horses, or other Cattle, or Carriages, as the Case may be; and in such Case the Claimant shall not be intitled to any Costs of Suit whatsoever, nor shall the Person who seized the said Goods, Merchandizes, or Commodities, or the said Ships, Vessels, or Boats, or the Horses or other Cattle or Carriages, be liable to any Action, Indictment, or other Suit or Prosecution on account of such Seizure; and that in case any Action, Indictment, or Prosecution, shall be commenced and brought to Trial, against any Person or Persons whatsoever, on account of the Seizure of any such Goods, Merchandizes, or Commodities, or of any Ships, Vessels, Boats, Horses, or other Cattle or Carriages, used and employed in removing or carrying the same, wherein a Verdict shall be given against the Defendant or Defendants, if the Court or Judge before whom such Action, Indictment, or Prosecution, shall be tried, shall certify on the said Record, that there was a probable Cause for such Seizure, then the Plaintiff, besides the Thing so seized, or the Value thereof, shall not be intitled to above two Pence Damages, nor to any Costs of Suit, nor shall the Defendant in such Prosecution be fined above one Shilling.

No. 4.
23 George III. c. 70.

'XXX. And, for the more effectual preventing vexatious 'Suits against the Officers of Excise, and their Assistants, act'ing under the Authorities and Powers to them given by the 'several Statutes made for securing the Duties of Excise and 'Inland Duties;' be it further enacted By the Authority aforesaid, That, from and after the first Day of *August* one thousand seven hundred and eighty-three, no Writ shall be sued out against, nor a Copy of any Process served upon, any Officer or Officers of Excise, or against any Person or Persons acting by his or their Order, and in his or their Aid, for any Thing done (1) in the Execution of, or by reason of (2) his or their Office, until one Calendar Month next after Notice in Writing shall have been delivered to him, or left at the usual Place of his Abode, by the Attorney or Agent for the Party who intends to sue out such Writ or Process as aforesaid; in which Notice shall be clearly and explicitly contained the Cause of Action, the Name and Place of Abode of (3) the Person who is to bring such Action, and the Name and Place of Abode of the said Attorney or Agent, and that a Fee of twenty Shillings shall be paid for the preparing and serving of every such Notice, and no more.

Officers not to be sued until after a Month's Notice.

Particulars to be contained in such Notice

XXXI. And be it further enacted, That it shall and may be lawful to and for any of the said Officers, or other Persons acting in their Aid, to whom such Notice shall be given as aforesaid, at any Time within one Calendar Month after such Notice shall have been given, to tender Amends to the Party complaining, or to his or her Agent or Attorney, and in case the same is not accepted, to plead such Tender in bar to any Action to be brought against him, grounded on such Writ or Process, together with the Plea of Not Guilty, and any other Plea, with Leave of the Court; and if upon Issue joined thereon, the Jury shall find the Amends so tendered to have been sufficient, then they shall give a Verdict for the Defendant or Defendants; and in such Case, or in case the Plaintiff shall become nonsuited, or discontinue his or her Action, or in case Judgment shall be given for such Defendant or Defendants

Officers may tender Amends.

If sufficient, a Verdict to be given for the Defendant, who shall be intitled to Costs, &c.

(1.) In Greenaway *v.* Hunt, 4 T. R. 553, it was ruled that no Action could be maintained to recover Duties paid after an Act imposing them was repealed, and paid over by the Defendant to his superior Officer: but supposing such Action maintainable, the Court held that the Defendant was intitled to Notice, although it was urged that in Feltham *v.* Terry, B. N. P. 24, the preceding Statute, 24 Geo II, did not extend to Actions of Assumpsit. See Wallace *v.* Smith, 5 East. 115.

(2.) Notice is not necessary in Assumpsit, to recover Money extorted for restoring Goods seized by Mistake. Grose, J.—"If an Officer seize Goods as forfeited, he does it *colore officii*; but if he takes Money for delivering up the Goods, there is no Pretence to say that is done *colore officii*; Irving *v.* Wilson, 4 T. R. 485. See Daniel *v.* Wilson, 5 T. R. 1, mentioned in Notes to the last Number.

(3.) Notice of Action for breaking the Plaintiff's Dwelling-house at A. is not sufficient to describe the Place of Abode; Williams *v.* Burgess, 3 Taunt. 127. Notice of an Action for seizing a Ship of J. S. of Rotherhithe, and A. B. *late* of Rotherhithe, was held sufficient; Wood *v.* Folliott, 3. B and P. 552. n.

No. 4.
23 George II. c. 70.

upon Demurrer, then such Defendant or Defendants shall be intitled to the like Costs as he would have been intitled to in case he had pleaded the General Issue only; and if upon Issue so joined the Jury shall find that no Amends were tendered, or that the same were not sufficient, and also against the Defendant or Defendants in such other Plea or Pleas, then they shall give a Verdict for the Plaintiff, and such Damages as they shall think proper, together with his or her Costs of Suit.

XXXII. Provided always, and be it further enacted, That no Plaintiff, in any Case where an Action shall be grounded on any Act done by the Defendant, shall be permitted to produce any Evidence of the Cause of such Action, except such as shall be contained in the Notice to be given as aforesaid, or shall recover any Verdict against such Officer, or Persons acting in his Aid, unless he shall prove on the Trial of such Action that such Notice was given, and that in Default of such Proof the Defendant in such Action shall recover a Verdict and Costs as aforesaid.

Money into Court.

XXXIII. And be it further enacted, That in case such Officer, or others acting in his Aid, shall neglect to tender any Amends, or shall have tendered insufficient Amends, before the Action brought, it shall and may be lawful for him, by Leave of the Court where such Action shall be brought, at any Time before Issue joined, to pay into Court such Sum of Money as he shall see fit, whereupon such Proceedings, Orders, and Judgments, shall be had, made, and given, in and by such Court, as in other Actions where the Defendant is allowed to pay Money into Court.

Limitation of Actions.

XXXIV. And be it further enacted by the Authority aforesaid, That if any Action or Suit shall be brought or commenced against any Person or Persons for any Matter or Thing done by any Officer or Officers of Excise, or any others acting in his or their Aid, in Execution of, or by reason of his or their Office, such Action or Suit shall be brought or commenced within three Months next after the Cause of Action shall arise, and not afterwards; and shall be laid and tried in the County or Place where the Facts were committed, and not in any other County or Place; and the Defendant or Defendants shall and may plead the General Issue, and give the Special Matter in Evidence at any Trial to be had thereupon; and if the Plaintiff or Plaintiffs shall become nonsuited, or discontinue his, her, or their Action or Suit, or if, upon a Verdict or Demurrer, Judgment shall be given against the Plaintiff or Plaintiffs, the Defendant or Defendants shall and may recover Treble Costs, and have such Remedies for the same as any Defendant or Defendants can or may have in other Cases where Costs are given by Law.

General Issue.

Treble Costs.

No. A

24 George III. sess. 2. c. 47.—An Act for the more effectual Prevention of Smuggling in this Kingdom.

P.

No. 5.
24 George III. sess. 2. c. 47.
23 Geo. III. c. 70.

'XXXV. AND whereas, by an Act made and passed in 'the twenty-third Year of the Reign of his present Majesty, (intituled, An Act for the more effectual preventing the illegal Importation of Foreign Spirits, and for 'putting a Stop to the private Distillation of *British*-made 'Spirituous Liquors; for explaining such Part of the Act, imposing a Duty upon Male Servants, as relates to the Right of 'Appeal from the Justices of the Peace; to amend and rectify 'a Mistake in an Act of the last Session of Parliament, with 'respect to the Removal of Tea from one Part of this Kingdom 'to other Parts thereof; and for preventing vexatious Actions 'against Officers of Excise acting in pursuance of the Authority 'given by Excise Statutes,) divers Regulations are made for 'the more effectual preventing vexatious Suits against the Officers of Excise, and their Assistants, acting under the Authorities and Powers to them given by the several Statutes 'made for securing the Duties of Excise and Inland Duties; 'which Regulations ought to be extended to Officers of the 'Customs, and their Assistants, acting under the Authorities 'and Powers to them given by the several Statutes made for 'securing the Duties of the Customs;' Be it enacted, That all and every Clause, Matter, and Regulation, in the said Act contained, touching and concerning any Action to be brought against any Officer or Officers of the Excise, or against any Person or Persons acting by his or their Order, and in his or their Aid, for any Thing done in the Execution of, or by reason of his or their Office, or any Proceeding thereupon, shall be extended to all Actions to be brought against any Officer or Officers of the Customs, or against any Person or Persons acting by his or their Order, and in his or their Aid, for any Thing done in the Execution of, or by reason of their Office, and to all Proceedings in every such Action, in as full and ample Manner as if the Officers of the Customs had been named and included in the said Act.

Extended to Officers of the Customs, &c.

No. 6.

42 George III. c. 85.—An Act for the trying and punishing in *Great Britain* Persons holding publick Employments, for Offences committed abroad; and for extending the Provisions of an Act, passed in the twenty-first Year of the Reign of King *James*, made for the Ease of Justices and others in pleading in Suits brought against them, to all Persons, either in or out of this Kingdom, authorized to commit to safe Custody. [22d. *June* 1802.]

No. 6.
42 George III. c. 85.

'WHEREAS Persons holding and exercising publick Employments out of *Great Britain* often escape Punishment for Offences committed by them, for Want of Courts having a sufficient Jurisdiction, in or by reason of their departing from the Country or Place where such Offences have been committed. and that such Persons cannot be tried in *Great Britain* for such Offences as the Law now stands, inasmuch as such Offences cannot be laid to have been committed within the Body of any County: And whereas it is therefore expedient that such and the like Provisions as are contained in an Act, passed in the eleventh and twelfth Years of the Reign of his late Majesty King *William* the Third, intituled, "An Act to punish Governors of Plantations of this Kingdom for Crimes by them committed in the Plantations," and in an Act passed in the thirteenth Year of the Reign of his present Majesty, intituled, "An Act for establishing certain Regulations for the better Management of the Affairs of the *East India* Company, as well in *India* as in *Europe*," and in an Act passed in the twenty-fourth Year of the Reign of his present Majesty, intituled, "An Act for the better Regulation and Management of the Affairs of the *East India* Company, and of the *British* Possessions in *India*, and for the establishing a Court of Judicature for the more speedy and effectual Trial of Persons accused of Offences committed in the *East Indies*," should be extended and applied to the Punishment of such Offenders,' May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, if any Person who now is, or heretofore has been, or shall hereafter be employed by or in the Service of his Majesty, his Heirs or Successors, in any Civil or Military Station, Office, or Capacity out of *Great Britain*, or shall heretofore have had, held, or exercised, or now has, holds, or exercises, or shall hereafter have, hold, or exercise any publick Station, Office, Capacity, or Employment, out of *Great Britain*, shall have committed, or shall commit, or shall have heretofore been, or is, or shall hereafter be guilty of any Crime, Misdemeanor, or Offence, in

11 & 12 Gul. 3. c. 12.

13 G. 3. c. 63.

24 G. 3. c. 25.

Offences committed by Persons employed in any publick Service abroad may be prosecuted in the Court of King's Bench in England, and may be laid in Middlesex, and the Offenders punished as if the Offences had been committed here.

No. 6.
42 George III.
c. 85
in England, and also incapacitated.

the Execution, or under Colour, or in the Exercise of any such Station, Office, Capacity, or Employment as aforesaid, every such Crime, Offence, or Misdemeanor may be prosecuted or inquired of, and heard and determined in his Majesty's Court of King's Bench here in *England*, either upon an Information exhibited by his Majesty's Attorney General, or upon an Indictment found; in which Information or Indictment such Crime, Offence, or Misdemeanor may be laid and charged to have been committed in the County of *Middlesex*, and all such Persons so offending, and also all Persons tried under any of the Provisions of the said recited Act, passed in the Reign of King *William* aforesaid, or this Act, or either of them, for any Offence, Crime, or Misdemeanor, and not having been before tried for the same out of *Great Britain*, shall, on Conviction, be liable to such Punishment as may, by any Law or Laws now in force, or any Act or Acts that may hereafter be passed, be inflicted for any such Crime, Misdemeanor, or Offence committed in *England*, and shall also be liable, at the Discretion of his Majesty's Court of King's Bench, to be adjudged to be incapable of serving his Majesty in any Station, Office, or Capacity, Civil or Military, or of holding or exercising any publick Employment whatever.

The Court of King's Bench, on Motion, may award a Writ of Mandamus to any Court of Judicature, or the Governor, &c. of the Country where the Offence was committed to obtain Proofs of the Matters charged, which shall be done by viva voce Evidence, and the Examinations shall be transmitted to the Court of King's Bench, and admitted on the Trial, &c.

II. And be it further enacted, That in all Cases of Indictments found or Informations exhibited under and by virtue of this Act, it shall be lawful for his Majesty's said Court of King's Bench, upon Motion to be made, and such Notice thereof as to the said Court of King's Bench may appear to be sufficient, by or on Behalf of his Majesty's Attorney General or other Prosecutor, or of the Defendant or Defendants, to award at the Discretion of the said Court, a Writ or Writs of *Mandamus* to any Chief Justice and Judges, or any Chief Justice or other Judge singly for the Time being, of any Court or Courts of Judicature in the Country or Island, or near to the Place where the Crime, Offence, or Misdemeanor shall be charged in such Indictment or Information to have been committed, or to any Governor or Lieutenant Governor or other Person having any chief Authority in such Country, Island, or Place, or to any other Person or Persons residing there, as the Case may require, and as to the said Court of King's Bench may, under all the Circumstances of the Case, seem most expedient for the Purpose of obtaining and receiving Proofs concerning the Matters charged in any such Indictment or Information, and the Person or Persons to whom such Writ or Writs shall be directed and sent, are hereby respectively authorized and required to hold a Court, Session, or Meeting, with all convenient Speed, for the Examination of Witnesses and receiving other Proofs concerning the Matters charged in such Indictment or Information respectively, and in the mean Time to cause public Notice to be given of the holding the said Court, Session, or Meeting, and to issue such Summons or other Process as may be requisite for the Attendance of Witnesses, and to adjourn from Time to Time as Oc-

No. 6.
42 George III. c. 85.

casion may require; and such Examination or Examinations shall be then and there openly and publickly taken *viva voce* in the said Court, Session, or Meeting, upon Questions put by any such Prosecutor or Prosecutors, Defendant or Defendants, or any Agent or Agents, Person or Persons on Behalf of the said Attorney General or other Prosecutor or Prosecutors, and Defendent or Defendants respectively, if any such shall attend for that Purpose, and by the Court, Person or Persons to whom such Writ shall be directed and sent as aforesaid, upon the respective Oaths of Witnesses, and the Oaths of skilful Interpreters if necessary, administered according to the Forms of their several Religions, and shall, by some Officer or Person sworn for that Purpose, be reduced into Writing on Parchment or Paper; and in case any Duplicate or Duplicates shall be required by or on Behalf of the Prosecutor, or the Defendant or Defendants respectively, into two or more Writings on Parchment or Paper, as the case may require; and such Examination or Examinations shall be sent to his Majesty in his Court of King's Bench closed up, and under the Seal or Seals of the Person or Persons before whom such Examination or Examinations as aforesaid shall have been taken; and the Person or Persons taking such Examination or Examinations as aforesaid, shall deliver the same to any Person or Persons appointed by the said Court of King's Bench to receive the same, or shall transmit the same in such Manner as the said Court of King's Bench shall direct; and all such Examinations shall, with all convenient Speed, be delivered to one of the Clerks in Court of his Majesty's Court of King's Bench, in the Crown Office of the said Court, for the safe Custody thereof; and every Clerk in the said Court of King's Bench, to whom any Examination or Examinations shall be delivered, is hereby authorized to administer an Oath to the Person delivering the same to him, in such Form as the said Court of King's Bench shall direct; and such Examination or Examinations shall be allowed and read upon the Trial of any such Indictment or Information, or any other subsequent Proceeding thereon or relating thereto, and shall be deemed as good and competent Evidence as if the Witness or Witnesses, whose Examination or Examinations shall be so read, had been present, and sworn, and examined *viva voce*, at such Trial, any Law or Usage to the contrary notwithstanding, saving all just Exceptions to be taken to any such Examination or Examinations, or any Part thereof when the same shall be offered to be read as aforesaid; and all Persons concerned shall be entitled to take Copies of such Examinations in the Custody of such Clerk in Court at their own Costs and Charges.

Court of King's Bench may order an Examination on Interrogatories de bene esse, where viva

III. And be it further enacted, That it shall also be lawful for the said Court of King's Bench upon Motion to be made, and such Notice thereof as aforesaid, by or on Behalf of his Majesty's Attorney General, or other Prosecutor, or Defendant or Defendants in any such Indictment or Information, to order an Examination *de bene esse* of Witnesses upon In-

terrogatories in any Case where the *viva voce* Testimony of such Witnesses cannot conveniently be had, to be taken before an Examiner to be appointed by the said Court, and the Depositions taken upon such Interrogatories shall be afterwards admitted to be read in Evidence upon the Trial of such Indictment or Information, or in any other subsequent Proceeding thereon or relating thereto, and shall be deemed good and sufficient Evidence in the Law, saving all just Exceptions to be taken to such Depositions when the same shall be offered to be read as aforesaid. (1.)

No. 6. 42 George III. c. 85

vore Evidence cannot be had.

IV. And be it further enacted, That it shall be lawful for any Person or Persons to whom any such Writ or Writs of *Mandamus* shall be directed, or Order sent as aforesaid, and in case the same shall be directed or sent to more than one Person, for so many of them as shall for that Purpose be appointed by the said Writ, or required by the said Order, and who shall act in the Execution thereof, and such Person and Persons is and are hereby respectively authorized and required, to administer all Oaths required to be taken under any of the Provisions of this Act, or necessary for the due Execution of any such Writ or Order, or any Act, Matter, or Thing relating thereto, and to examine upon Oath all Persons whom he or they find Occasion to summon, and all other Persons whom he or they shall think fit to examine, touching all Matters and Things necessary for the due Execution of any such Writ or Order as aforesaid; and such Person and Persons respectively, to whom such Writ shall be directed, or Order sent as aforesaid, or so many of them as shall in that Behalf be appointed, and shall act in the Execution thereof as aforesaid, shall have full Power and Authority to compel the Appearance and giving Evidence of any Witness upon any such Writ or Order, and to issue Special Summons or other Process for that Purpose, and may proceed upon such Summons, or other Process, by Imprisonment of the Body of any Person refusing to appear or give Evidence, in like Manner as any Court or Courts of Record within this Kingdom, having competent Authority for that Purpose, may proceed against any Person or Persons for any Contempt committed against the Authority of any such Court.

Persons to whom such Writs of Mandamus shall be directed, empowered to do all Things necessary for the due Execution thereof by compelling the Appearance and Testimony of Witnesses, &c

V. And be it further enacted, That in case any Person or Persons in the Course of his, her, or their Examination upon Oath, under and by virtue of the said recited Act of the twenty-fourth Year of his present Majesty, or this Act, shall wilfully and corruptly give false Evidence, such Person or Persons so offending, and being thereof duly convicted, shall be, and is and are hereby declared to be, subject and liable to such Pains and Penalties, as Persons guilty of wilful and corrupt Perjury shall be liable to by any Law or Laws then in force in the Kingdom, Island, or Place where such false Evidence shall have been given as aforesaid.

Persons giving false Evidence (either under 24 Geo 3 c. 25, or this Act) subject to Penalties of Perjury

(1.) The Defendant is only intitled to such Mandamus, upon laying sufficient Grounds before the Court by Affidavit; but the Prosecutor is intitled of course, Rex v Jones, 8 East. 31

No. 6.
42 George III. c. 85.
21 Jac. 1. c. 12.

VI. 'And whereas it is expedient to extend the Provisions of an Act, passed in the twenty-first Year of the Reign of his Majesty King *James* the First, intituled, "An Act to enlarge and make perpetual the Act made for Ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the seventh Year of his Majesty's most happy Reign," to all Persons who may by Law commit to safe Custody, either in or out of this Kingdom;' Be it therefore enacted, That, from and after the passing of this Act, the said recited Act, and all the Provisions therein contained shall extend, and be deemed, taken, and construed to extend to all Persons having, holding, or exercising, or being employed in, or who may hereafter have, hold, or exercise, or be employed in any publick Employment, or any Office, Station, or Capacity, either Civil or Military, either in or out of this Kingdom; and who under and by virtue, or in pursuance of any Act or Acts of Parliament, Law or Laws, or lawful Authority within this Kingdom, or any Act or Acts, Statute or Statutes, Ordinance or Ordinances, or Law or Laws, or lawful Authority in any Plantation, Island, Colony, or foreign Possession of his Majesty, now have or may hereafter have, by virtue of any such publick Employment, or such Office, Station, or Capacity, Power or Authority to commit Persons to safe Custody; and all such Persons, having such Power or Authority as aforesaid, shall have and be entitled to all the Privileges, Benefits, and Advantages, given by the Provisions of the said Act as fully and effectually, to all Intents and Purposes, as if they had been specially named therein: Provided always, That where any Action, Bill, Plaint, or Suit upon the Case, Trespass, Battery, or false Imprisonment, shall be brought against any such Person as is in this Act described as aforesaid, in this Kingdom, for or upon any Act, Matter, or Thing done out of this Kingdom, it shall be lawful for the Plaintiff bringing the same to lay such Act, Matter, or Thing, to have been done in *Westminster*, or in any County where the Person against whom any such Action, Bill, Plaint, or Suit, shall be brought, shall then reside; any Thing in this Act to the contrary thereof notwithstanding.

The Protection of recited Act extended to Persons having publick Employment, in or out of the Kingdom, being by Law empowered to commit Persons to safe Custody.

Actions brought against them for Things done out of this Kingdom, may be laid in Westminster, &c.

No. 7.

43 George III. c. 141.—An Act to render Justices of the Peace more safe in the Execution of their Duty. [11th *August*, 1803.]

No. 7.
43 George III. c. 141.

'WHEREAS it is expedient that Justices of the Peace in *Great Britain* and *Ireland* respectively, who by virtue of divers Acts of Parliament in Force in the United Kingdom, are authorized and required to convict Persons of sundry

No. 7. 43 George III. c. 141.

'Offences in a summary Way, should be rendered more safe 'in the Execution of such their Duty.' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Actions whatsoever which shall, at any Time after the passing of this Act, be brought against any Justice or Justices of the Peace in the United Kingdom of *Great Britain* and *Ireland*, for or on account of any Conviction by him or them had or made, under or by virtue of any Act or Acts of Parliament in Force in the said United Kingdom, or for or by reason of any Act, Matter, or Thing whatsoever, done or commanded to be done by such Justice or Justices, for the levying of any Penalty, apprehending any Party, or for or about the carrying of any such Conviction into Effect, in case such Conviction shall have been quashed, (1.) the Plaintiff or Plaintiffs in such Action or Actions, besides the Value and Amount of the Penalty or Penalties which may have been levied upon the said Plaintiff or Plaintiffs, in case any Levy thereof shall have been made, shall not be entitled to recover any more or greater Damages than the Sum of Twopence, nor any Costs of Suit whatsoever, unless it shall be expressly alleged in the Declaration in the Action wherein the Recovery shall be had, and which shall be in an Action upon the Case only, that such Acts were done maliciously and without any reasonable and probable Cause. (2.)

In Actions against Justices for any Conviction, &c the Plaintiff (besides any Penalty levied) shall recover only 2d. Damages, unless Malice and want of probable Cause be expressly alleged.

II. And be it further enacted, That such Plaintiff shall not be entitled to recover against such Justice any Penalty which shall have been levied, nor any Damages or Costs whatsoever, in case such Justice shall prove at the Trial that such Plaintiff was guilty of the Offence whereof he had been convicted, or on account of which he had been apprehended, or had otherwise suffered, and that he had undergone no greater Punishment than was assigned by Law to such Offence.

Nor shall the Penalty, &c. be recovered if Plaintiff be proved guilty of the Offence, &c.

(1.) See Massey v. Johnson, 12 East, 67, Gray v. Cookson, 16 East, 13.

(2.) See Burley v. Bethune, 1 Marshall, 220, the Plaintiff must prove Want of probable Cause in an Action for malicious Prosecution. shewing that he was innocent of the Offence of which he is convicted is not sufficient

Part IV. Class XXI.

PENAL ACTIONS AND INFORMATIONS.

The following Note upon the general Subject of Penal Actions was subjoined by the Editor to the Case of Kirkham *v* Wheeley, 1 S. lk 30, 6th Edition.

An Action *q t* is the Suit of the Informer, not of the King Lut 196 A Plaintiff *qui tam* may be nonsuited, 3 Lev 398 Sav 56 Upon such Nonsuit the Defendant is intitled to Costs against him, Wilkinson, q t *v* Allot, Cowp 366 The Court will not in a Penal Action stay Proceedings until Costs of a *non pros* at the Suit of another Plaintiff are paid, English, q t *v* Cox, Cowp 322 nor upon Affidavit, that a former Action was brought for the same Offence, which the Defendant had leave to compound, the Fact must be specially pleaded, Harrington, q t *v* Johnson Cowp 711 Proceedings will be stayed on Motion until the Plaintiff gives Notice of his Place of Abode, and, if he is out of the Realm, Security for Costs, Wal *v* Green, Str 697 Actions on Penal Statutes are expressly excepted in Stat 4 Anne, ch 16 which allows double Pleadings and it has been accordingly adjudged that in these the Defendant cannot plead double, Heyrick *v* Foster, 4 T R 701 A Plea of another Action commenced the same Term must set forth that it was commenced prior, Combe *v* Pitt, 3 Burr 1423 1 B 1?? Informations on Penal Statutes are excepted in the Statutes of Amendment, but there is no Difference between Civil and Penal Actions with respect to Amendments at Common Law, Baldwin *v* ———, Bunb 49 Brook *v* Day, Bunb 336 Edgell *v* Decker, Bunb 252, Wynne *v* Middleton Str 1227, 1 Wils 216, Bonfield, q t *v* Milner, 2 Burr 1098, Mace *v* Lovett, 5 Burr 2833 Richards *v* Brown, Doug 113 The Court will not set aside a Judgment of *non pros* regularly obtained against a *mere* common Informer suing for Punishment but it might be otherwise if the Party really injured sued for Justice and Reparation, 1 Burr 401 Where a *q t* Action has been depending four Years, an Amendment will not be permitted though all is in Paper, Goff *v* Popplewell, 2 T R 707 In a popular Action on two Counts for two £5 Penalties, the Defendant had leave to pay £5 into Court generally, Stock *v* Eagle, 2 Bl Rep 1052 If there appears Reason to suspect that the Action is brought merely for the Sake of the Issue-money, that will be ordered to be paid into Court to abide the Event of the Suit, Parker q t *v* Macfarlan 3 T R 137. The Defendant may have *Vt i prius* by Proviso, 2 Leon 1. A Quaker's Evidence is admissible in a Penal Action Atcheson *v* Everett, Cowp 382 If the *q t* Informer die after a Verdict his Executor or Administrator shall have Judgment for his Moiety, Hard 161 If he dies after Judgment, and his Death is suggested on the Roll, Com Dig Action upon Stat E 2 New Trial may be granted for the Mistake or Misdirection of the Judge, but not for the wrong Conclusion of the Jury after Verdict for the Defendant, Wilson *v* Rastall, 4 T R 753 If the Action is for *several* Penalties, and the Jury give a Verdict *generally* for one, which the Plaintiff applies to a *particular* Count, and that cannot be supported, he cannot afterwards apply it to another, which is good and sufficiently supported by Evidence, Holloway, q t *v* Bennett, 3 T R 448 The Defendant in a *q t* Action cannot be discharged upon surrendering his Effects under

the Lords' Act; Harl, q. t. v. Hawkins, 3 Bur. 1322; 1 Bl. 372. The Defendant cannot be taken in Execution on a Sunday; Rex v. Myers, 1 T. R. 265.

No. 1.

4 Henry VII. c. 20.—Actions popular, prosecuted by Collusion, shall be no Bar to those which be pursued with good Faith.

No. 1. 4 Henry VII. c. 20.

The Enormities of Collusion practised in suing of Actions popular.

'ITEM, That where Actions popular in divers Cases have 'been ordained by many good Acts and Statutes afore this 'Time made, for the Reformation of Extortions, Maintenan-'ces, Oppressions, Injuries, Exactions, and Wrongs used 'and committed within this Realm, which Actions been very 'penal to all Misdoers and Offenders in such Actions condemn-'ed, and much profitable as well to the King, as to every 'of his Subjects that them will sue and maintain, if the same 'Actions so sued and commenced might be truly pursued with-'out Covin or Collusion. But now it is so commonly used 'within this Realm, that if any such Offenders offending in 'Cases where any of the said Actions lie, then the said Mis-'doers or Offenders, in eschewing to leese the said Penalties, 'will cause an Action popular to be commenced against them 'by Covin of the Plaintiff upon that Case wherein they have so 'offended; or else if any such Action popular be commenced 'against any such said Offender by good Faith, then the same 'Offender will delay the said Action, either by Non-appear-'ance or by Traverse, and, hanging the same Action, the same 'Offender will cause like Action popular to be brought against 'him by Covin, for the same Cause and Offence that the first 'Action was sued, and then by Covin of the Plaintiff in that 'second Action he will be condemned, either by Confession, 'feigned Trial, or Release: which Condemnation or Release, 'so had by Collusion and Covin pleaded by the said Offender, 'shall bar the Plaintiff in the Action sued in good Faith; and 'by these subtil Means of Collusion and Covin the said good 'Acts and Statutes seldom been executed against such Offenders 'which causeth them to be bolder to offend the King, as well 'in breaking of the said Statutes, Laws, and Peace, as in rob-'bing, murdering, Exactions taking, Quarrels maintaining, 'and the King's poor Subjects by Extortion, and many other 'unlawful Means oppressing:' Therefore the King our Sovereign Lord, in reforming of the Premisses, by the Advice and Assent of the Lords Spiritual and Temporal, and at the Request of the said Commons, in this said present Parliament assembled, and by Authority of the same, hath ordained, established, and enacted, That if any Person or Persons hereafter sue with good Faith any Action popular, and the Defendant or Defendants in the same Action plead any Manner of Recovery of Action popular in Bar of the said Action, or else that the same Defendant or Defendants plead, that he or they before that Time bared any such Plaintiff or Plaintiffs in any such Action popular,

Recovery in an Action popular by Covin, or a Bar in the same, is no Plea in an Action sued with good Faith.

No. 1.
4 Henry VII. c. 20.

that then the Plaintiff or Plaintiffs in the Action taken with good Faith may aver, that the said Recovery in the said Action popular was had by Covin, or else to aver that the said Plaintiff or Plaintiffs was or were barred in the said Action popular by Covin, that then, if afterward the said Collusion or Covin so averred be lawfully found, the Plaintiff or Plaintiffs in that Action sued with good Faith, shall have Recovery according to the Nature of the Action, and Execution upon the same in like wise and Effect, as though no such Action afore had been had. And moreover, that it is enacted and ordained by the Authority aforesaid, That in every such Action popular, wherein the Defendant or Defendants shall be lawfully condemned or attainted of Covin or Collusion, as is aforesaid, that every of the same Defendants have Imprisonment of Two Years by Process of *Capias* and Outlagary, to be sued within the Year after such Judgment had, or at any Time after, till the said Defendant or Defendants shall be had and imprisoned, as is aforesaid, and that as well at the King's Suit, as of every other that will sue in that Behalf: And that no Release of any common Person hereafter to be made to any such Party, whether before or after any Action popular, or Indictment of the same had or commenced, or made hanging the same Action, be in any wise available or effectual to let or surcease the said Action, Indictment, Process or Execution. Provided alway, That no Plaintiff or Plaintiffs be in any wise received to aver any Covin in any Action popular, where the Point of the same Action, or else the Covin or Collusion have been once tried, or lawfully found with the Plaintiff or Plaintiffs, or against them, by Inquest of twelve Men, and not otherwise.

The Punishment of the Defendant attainted of Collusion

No Release of a common Person can discharge a popular Action.

No Collusion averable where the Point of the Action hath been tried by Verdict.

No. 2

18 Elizabeth, c. 5.—An Act to redress Disorders in common Informers.

No. 2.
18 Elizabeth, c. 5.

FOR redressing of divers Disorders in common Informers, and for better Execution of penal Laws, Be it enacted, That every Informer upon any penal Statute shall exhibit his Suit in proper Person, and pursue the same only by himself or by his Attorney (1.) in Court; and that none shall be admitted or received to pursue against any Person or Persons upon any penal Statute, but by way of Information or original Action and not otherwise, nor shall have nor use any Deputy or Deputies at all; and that upon every such Information which shall be exhibited, a special Note be made of the very Day, Month and Year of the exhibiting thereof into any Office or to any Officer which lawfully may receive the same, without any Manner of Antedate thereof to be made, and that the same Information be accounted and taken to be of Record from that Time forward and not before. And be it likewise enacted

The Duty of an Informer in prosecuting a Suit upon a Penal Statute, and his Punishment if he abuse it.

(1) The Action therefore cannot be brought by an Infant, who can only sue by Guardian or next Friend; Maggs v. Ellis, B. N. P. 196.

No. 2.
18 Elizabeth, c. 5.

for the Consideration aforesaid, That no Process be sued out upon any such Information, until the Information be exhibited in Form aforesaid; and that upon every such Process shall be indorsed, as well the Party's Name that pursueth the same Process, as also the Statute upon which the Information in that Behalf made is grounded; And that every Clerk making out Process contrary to the Tenor and Provision of this Act, shall forfeit and lose forty Shillings for every such Offence; the one Half to be to the Queen's Majesty, her Heirs and Successors, and the other Half to the Party against whom any such defective Process shall be awarded, to be recovered in any Court of Record, by Action of Debt or Information, in which no Essoin, Protection, Injunction or Wager of Law shall be permitted or allowed.

A Note of the Day, Month and Year of the exhibiting of an Information.

Indorsement of the Process awarded upon an Information.

II. And be it further enacted, That no Jury shall be compelled to appear in any of the Queen's Majesty's Courts of *Westminster*, for the Trial of any Issue in any such Suit upon any penal Law, for any such Offence committed above thirty Miles from the City of *Westminster*, except in case where the Attorney General for the Time being, for some reasonable Cause in that Behalf to be shewed, shall require the same to be tried at the Bar, in any of the Courts of the Queen's Majesty, her Heirs or Successors, at *Westminster* aforesaid; which Request shall be noted on the Back side of the Writ of *Distringas* thereupon awarded, to the End the Sheriff or his Bailiff may and shall signify the same to the Jury that are in such Case impanelled.

Where the Trial of an Issue shall be in a Suit upon a penal Statute.

III. And be it further enacted, That no such Informer or [illegible] shall or may compound or agree with any Person or [illegible] that shall offend, or shall be surmised to offend,(2) against any Penal Statute,(3.) for such Offence committed, or pretended to be committed, but after answer made in Court unto the Information or Suit in that Behalf exhibited or prosecuted; nor after answer, but by the Order or Consent of the Court (4.) in which the same Information or Suit shall be de-

No Informer shall compound with the Defendant but by Consent of the Court.

(2) The Party paying Money to compound may recover it back; Williams v. Hedley, 8 East, 378. As to suing in an inferior Court, or by Bill [illegible] R. see Authorities cited Com. Dig. Notes upon Statute E. 1. See also 2 Hawk. 380, Leigh v. Kent, 3 T. R. 362, n.

(3) The Enactment extends to Offences created by subsequent Statutes; semble Pie's Case, Hutton 35.

(4.) The Court of C. B. will not give Leave to compound, either before or after Verdict, where Part of the Penalty goes to the King, unless the Consent of the Crown is previously signified; Howard v Sowerby, 1 Taunt. 103; and a King's Serjeant must be instructed to consent, though there is an Affidavit that the Moiety of the Crown has been paid; Sheldon v. Mumford, 5 Taunt. 268. In Button v. Pierce, Barnes 462, it is said by the Court, that after Conviction Leave is never given to compound: but that was a Case not within the Statute, and therefore the Opinion merely a Dictum. In Bradshaw v. Mottram, 1 Str. 167, Leave was given after Verdict on Affidavit of the Poverty of the Defendant who was in Execution. In Maughan v. Walker, 5 T. R. 98, after Verdict in [illegible] under favourable Circumstances. But it lies with the Defendant to shew the Circumstances entitling him to such an Indulgence; Crowder v. Wagstaff, 1 B. and P. 18

No. 2. 18 Elizabeth, c. 5

pending; upon the Pains and Penalties hereafter in this present Act set down and declared: And that if any such Informer or Plaintiff as aforesaid, shall willingly delay his Suit, or shall discontinue or be nonsuit in the same, or shall have the Trial or Matter past against him therein by Verdict or Judgment of Law; That then in every such Case the same Informer or Plaintiff shall yield, satisfy and pay unto the Party Defendant, his Costs, Charges and Damages, to be assigned by the Court in which the same Suit shall be attempted. For the Recovery and Execution whereof every such Defendant shall immediately upon the same Costs, Charges and Damages assigned, have his *Capias ad satisfac Fieri facias*, or *Elegit*, to be awarded unto him out of the same Court in which the same shall be so assigned as is aforesaid, as in other Cases of Execution.

The Penalty of an Informer delaying or discontinuing his Suit, or being Nonsuit, &c.

IV. And be it also enacted, That if any Person or Persons (except the Clerks of the Court only, for making out of Process otherwise than is above appointed) shall offend in suing out of Process, making of Composition, or other Misdemeanour, contrary to the true Intent and Meaning of this Statute, or shall by Colour or Pretence of Process, or without Process, upon Colour or Pretence of any Matter of Offence against any Penal Law,(5), make any Composition, or take any Money, Reward or Promise of Reward for himself, or to the Use of any other, without Order or Consent of some of her Majesty's Courts at *Westminster;* that then he or they so offending, being thereof lawfully convicted, shall stand on the Pillory (6.) in some Market-Town next adjoining where the same Offence shall be committed, in the open Market-time, and there remain by the Space of two Hours; and shall from and after such Conviction for ever be disabled to pursue, or be Plaintiff or Informer in, any Suit or Information upon any Statute popular or penal; and shall also for every such Offence forfeit and lose ten Pounds of lawful *English* Money, the one Half thereof to the Queen's Majesty, her Heirs and Successors, and the other Half to the Party grieved thereby, to be recover-

The Punishment of an Informer misbehaving himself in the Prosecution of his Suit, &c.

In an Action on the Post Horse Duties, the Plaintiff was allowed to receive the deficient Duties (being less than 40s.) and Costs, although amounting to more than the 10s paid to the Crown; North v. Smart, 1 B. and P. 51. In an Action on a Statute giving no Costs, the Plaintiff having agreed to stay Proceedings, on Payment of a Sum in equal Moieties to the Crown and the Plaintiff, and the entire Costs to the Plaintiff; the Crown obtained a Moiety of the Costs also; Lee v. Cass, 2 Taunt. 213. On Leave to compound, the King's Half is paid to the Master of the Crown Office; Brown v. Bailey, 4 Bur. 1929. The Leave to compound is in the Discretion of the Court, and was refused in Howell v. Morris, in an Action for selling Gold of less Fineness than required by Stat. 18 Eliz. c. 15; Howell v. Morris, 1 Wils. 79; in an Action on Stat. 20 Geo. 2. c. 36, for keeping a disorderly House, in 38 Geo. 3. (Tidd's Practice). For the Course of Proceeding on Applications for Leave to compound, see Tidd, ch. 22.

(5.) See Rex v. Southerton, 6 East, 126.

(6.) By Stat. 56 Geo. III. c. 138, the Punishment of the Pillory is abolished in all Cases except Perjury, and Fine and Imprisonment substituted. See the Stat. post, Part V.

ed in any Court of Record, by Action of Debt or Information; in which no Essoin, Protection, Injunction or Wager of Law shall be permitted or allowed: And that Justices of *Oyer* and *Terminer*, Justices of Assize in their Circuits, and Justices of Peace in their Quarter-Sessions, shall have full Power and Authority to hear and determine all Offences to be committed or done contrary to the true Intent and Meaning of this present Act.

No. 2. 18 Elizabeth, c. 5.

What Justices may hear and determine these Offences.

V. Provided always, and nevertheless be it enacted, That it shall and may be lawful to and for any Person or Persons grieved by Means of any Manner of Maintenance, Champerty, Buying of Titles or Imbracery, to pursue upon any the Statutes provided and set forth against Maintenance, Champerty, Buying of Titles or Imbracery, as he or they might have done before the Making of this Act; any Thing in this Act contained to the contrary in any wise notwithstanding.

Pursuing upon the Statute against Maintenance, Champerty, &c.

VI. Provided also, That this Act shall not extend to any Suit already depending, nor shall restrain any certain Person, Body Politick or Corporate, to whom or to whose Use any Forfeiture, Penalty or Suit is or shall be specially limited or granted by Virtue of any Statute, and not generally to any Person that will sue, but that every such certain Person, Body Politick or Corporate, which might sue or inform, as if this Act were not made, may in such Case sue, inform and pursue, as he or they might have done if this Act were never had nor made.

Penalties given to Persons certain, and not generally.

VII. And provided also, That neither this Act, nor any Thing therein contained, shall in any wise extend to any such Officers of Record, as have in respect of their Offices heretofore lawfully used to exhibit Informations or sue upon penal Laws, nor to any Officers informing or pursuing for Matters only concerning his or their Offices, but that they and every of them may inform and pursue in that Behalf, as they might have done before the making of this Act; any thing in this Act contained to the contrary in any wise notwithstanding.

Officers using to exhibit Information.

VIII. This Act to take Force and Effect from the Feast of *Easter* next coming, and from thenceforth to endure unto the End of the first Session of the next Parliament. [Made perpetual by 27 Eliz. c. 10. 31 Eliz. c. 5.]

No. 3.

31 Elizabeth, c. 5.—An Act concerning Informers.

'FOR that divers of the Queen's Majesty's Subjects be 'daily unjustly vexed and disquieted by divers common 'Informers upon Penal Statutes, notwithstanding any former 'Statute that hath been heretofore made against their Disor-'ders;' For Remedy whereof, Be it enacted by the Authority of this present Parliament, That all former Statutes made for Reformation of Disorders of such common Informers, not re-

No. 3. 31 Elizabeth, c. 5.

None restrained by Order of any of the Queen's Courts may be an Informer.

No. 3.
31 Elizabeth, c. 5.

pealed or altered by this Act, shall be put in due Execution: And that no Person, other than the Party grieved, after twenty Days after the End of this Session of Parliament, shall be received to inform or sue upon any Penal Statute, that before that Time hath been for any Misdemeanor, by any Order of any of the Queen's Majesty's Courts, ordered not to follow or pursue any Suit upon any Penal Statute.

18 Eliz. c. 5.
In Information upon Penal Statutes the County where the Offence was done must be expressed, &c.
Many be disquieted by common Informers.
Informers restrained to sue by Order of some Court.
The County shall be expressed where the Offence was done.

II. And be it further enacted by the Authority aforesaid, That in any Declaration or Information at any Time after twenty Days after the End of this Session of Parliament to be had, brought, sued or exhibited, the Offence against any Penal Statute shall not be laid to be done in any other (1.) County, but where the Contract, or other Matter alledged to be the Offence, was in Truth done; And that every Defendant in such Action or Information shall and lawfully may traverse and alledge, that the Offence supposed by the same Suit to be committed, was not committed in the County where such Offence is alledged; which being tried for the Defendant, or if the Plaintiff be thereupon nonsuit in his Information or Suit, that then the Plaintiff shall be barred in that Action or Information; any Law or Use to the contrary notwithstanding.

Officers of Record shall not be bound by this Act.

III. Provided always, That this Act, nor any Thing herein contained, shall in any wise extend to any such Officers of Record, as have in Respect of their Offices heretofore lawfully used to exhibit Informations, or sue upon Penal Laws; but that they and every of them may inform and pursue in that Behalf, as they might have done before the making of this Act; any Thing in this Act to the contrary in any wise notwithstanding.

Certain Offences whereof Information may be given in any County.
1 El. c. 11.
1 El. c. 20.
37 H. 8. c. 9.
13 El. c. 8.
5 & 6 Ed. 6. c. 14.
21 Jac. 1. c. 4. § 2.

IV. And provided also, That this Act, nor any Thing herein contained, shall extend to the laying or alledging of any Offence in any Declaration or Information, for or concerning any Champerty, Buying of Titles or Extortion, or any Offence committed or to be committed against the Statute made in the first Year of the Queen's Majesty's Reign, intituled, 'An Act limiting the Times for laying on Land Merchandize 'from beyond the Seas, and touching Customs of sweet 'Wines;' And one other Act made in the said first Year of her Majesty's Reign, intituled, 'An Act of a Subsidy of Tonnage and Poundage,' or any Thing in any of them contained; or for the concealing, or defrauding the Queen's Majesty, her Heirs and Successors, of any Customs, Tonnage, Poundage, Subsidy, Impost or Prizage; or for any Matter of corrupt Usury; or for any Offence comprised in any Statute made or to be made against engrossing, regrating or forestalling, where

(1.) There has been much Difference of Opinion as to this Provision being in Force, and in Wynn *v.* Bellman, Mic. 55 Geo. III., 1 Marshall, 320, (in which the Venue was changed upon the common Affidavit) it seems to have been supposed that the Action might be laid in any County; but in the following Term it was held, upon a full Discussion and Examination of this Statute and 21 James, c. 4, post. that the Provision is in Force unrepealed by the later Statute, and extends to Cases in which Penal Actions are given by subsequent Statutes, and see Robinson *v.* Garthwaite, 9 East, 296.

No 8
31 Elizabeth, c. 5

the Penalty or Forfeiture shall appear to be to the Value of twenty Pounds or above; but that every such Offence shall or may be laid in any County at the Pleasure of any such Informer; any Thing in this Act to the contrary notwithstanding.

Within what Times Suits upon Penal Statutes shall be pursued.

V. And be it further enacted by the Authority aforesaid, That all Actions, Suits, Bills, Indictments or Informations, which after twenty Days next after the End of this Session of Parliament shall be had, brought, sued or exhibited, for any Forfeiture upon any Statute Penal made or to be made, whereby the Forfeiture is or shall be limited to the Queen, her Heirs, or Successors only, shall be had, brought, sued or exhibited within two Years next after the Offence committed or to be committed against such Act Penal, and not after two Years; and that all Actions, Suits, Bills or Informations which after the said twenty Days shall be had, brought, sued or commenced for any Forfeiture upon any Penal Statute made or to be made, except the Statute of Tillage, the Benefit and Suit whereof is or shall be by the said Statute limited to the Queen, her Heirs or Successors, and to any other which shall prosecute in that Behalf, (2) shall be had, brought, sued or commenced by any Person that may lawfully pursue for the same as aforesaid, within one Year next after the Offence (3) committed, or to be committed against the said Statute; and in Default of such Pursuit, that then the same shall be had, sued, exhibited, or brought for the Queen's Majesty, her Heirs or Successors, at any Time within two Years after that Year ended. And if any Action, Bill, Suit, Indictment or Information for any Offence against any Penal Statute made or to be made, except the Statute of Tillage, shall be brought after the Time in that Behalf before limited, That then the same shall be void and of none Effect; any Act or Statute made to the contrary notwithstanding.

Actions, Informations, &c limited by some Statutes to be sued within a shorter Time

VI. Provided always, That where any Action, Information, Indictment or other Suit, is or shall be limited by any Statute Penal, to be had, sued, commenced or brought within shorter Time than is afore rehearsed; That in every such Case,

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(2) The Act extends to an Action given in the first Instance to the Party grieved, and on his Default to a common Informer for himself and the Poor of the Parish; Lookup v. Frederick, Bull. N. P 195. Where the whole Penalty is given to the Informer, the Case is not within the Act. Cuthford v. Blandford, Carth. 232; 1 Lord Raym. 78, Chance v. Adams, 1 Lord Raym. 77.

(3) The Action must be shewn to be commenced in proper Time. The Memorandum on the Record is prima facie Evidence of the Time of commencing the Action, as well in the Common Pleas as the King's Bench; Webb v. Pratchitt, 1 B and P., 263. It will in general be sufficient to shew, that a Writ which will warrant the Declaration was sued out in proper Time without shewing it to have been either served or returned, Parsons v. King, 7 T. R. 6. Where two or more Writs have issued, it must appear that the Writ on which the Plaintiff has declared, was a Continuation of the first, which can only be done by shewing that the first Writ was returned; Harris v. Woolford, 6 T. R., 617. Lord Kenyon allowed the Plaintiff to produce the Writ (the Action not appearing, by the Memorandum on the Record, to be commenced in Time) after the Objection had been taken; Mangham v. Walker, Peake, N. P. C. 169.

No 3.
31 Elizabeth, c. 5.

the Action, Information, Indictment or other Suit shall be brought within the Time limited by such Estatute.

A Repeal of the Statute of 7 H 8 c 3. touching Informations.

VII. And be it further enacted by the Authority aforesaid, That one Statute made in the seventh Year of the Reign of the late King of famous Memory, King *Henry* the Eighth, concerning the Time of bringing Actions or Informations upon Penal Laws, shall from and after twenty Days after the End of this Session of Parliament be utterly repealed; and that all Suits from and after the said twenty Days to be pursued upon any Statute, for using any unlawful Game, or for not using of any lawful Game, or for not having Bows and Arrows according to the Law, or for using any Art or Mystery in the which the Party hath not been brought up according to the Statute in that Behalf made, shall be sued and prosecuted in the General Quarter-Sessions of the Peace, or Assizes, of the same County where the Offence shall be committed, or otherwise enquired of, heard and determined in the Assizes, or General Quarter-Sessions of the Peace of the same County where such Offence shall be committed, or in the Leet within which it shall happen, and not in any wise out of the same County where such Offence shall happen or be committed. 18 El. c. 5. 27 El. c. 10. 21 Jac. 1. c. 4.

5 El. c. 4. Certain Offences punishable only at the Assizes, Quarter Sessions, or in a Leet.

No. 4.

21 James I. c. 4.—An Act for the Ease of the Subject concerning Informations upon Penal Statutes *

No 4.
21 James I. c 4.

18 El c 5. Informations upon Penal Statutes shall be prosecuted in the Counties where the Offences were committed.

'WHEREAS the Offences against divers and sundry Penal 'Laws and Statutes of this Realm may better, and 'with more Ease and less Charge to the Subject be commen-'ced, sued, informed against, prosecuted and tried, in the 'Counties where such Offences shall be committed: And 'whereas the poor Commons of this Realm are grievously 'charged, troubled, vexed, molested and disturbed by divers 'troublesome Persons, commonly called Relators, Informers, 'and Promoters, by prosecuting and inforcing them to appear 'in his Majesty's Courts at *Westminster*, and to answer Offen-'ces supposed by them to be committed against the said Penal 'Laws and Statutes, or else to compound with them for the 'same:' For Remedy whereof be it enacted by the Authority of this present Parliament, That all Offences hereafter to be committed against any Penal Statute, for which any common Informer or Promoter may (1.) lawfully ground any popular

* For the general Effect of this Act, as connected with that of 31 Eliz. (the preceding Number) see Barber v. Tilson, 2 M and S 429.

(1.) The Statute does not extend to Cases arising upon subsequent Statutes, Hick's Case, 1 Salk 372: but if the Offence was created by a temporary Statute, expired before the 21 J. 1, and continued by subsequent Statutes, the subsequent Acts which have continued it from Time to Time, all give Effect to it as an Act of the Time when it was first passed, Shipman v. Henbest, 4 T. R. 109.

No. 4.
21 James I.
c. 4.

Action, Bill, Plaint, Suit or Information, before (2.) Justices of Assize, Justices of *Nisi prius* or Gaol-delivery, Justices of *Oyer* and *Terminer*, or Justices of Peace in their General or Quarter Sessions, shall, after the End of this present Session of Parliament, be commenced, sued, prosecuted, tried, recovered, and determined by way of Action, Plaint, Bill, Information, or Indictment, before the Justices of Assize, Justices of *Nisi prius*, Justices of *Oyer* and *Terminer*, and Justices of Gaol Delivery, or before the Justices of Peace of every County, City, Borough, or Town Corporate, and Liberty, having Power to enquire of, hear and determine the same, within this Realm of *England*, or Dominion of *Wales*, wherein such Offences shall be committed, in any of the Courts, Places of Judicature, or Liberties aforesaid respectively, only at the Choice of the Parties which shall or will commence Suit, or prosecute for the same, and not elsewhere, save only in the said Counties, (3.) or Places usual for those Counties, or any of them: And that the like Process upon every popular Action, Bill, Plaint, Information, or Suit, to be commenced, or sued, or prosecuted after the End of this present Session of Parliament, by Force of or according to the Purport of this Act, be had and awarded, to all Intents and Purposes, as in an Action of Trespass, *Vi & Armis*, at the Common Law; and that all and all manner of Informations, Actions, Bills, Plaints, and Suits whatsoever, hereafter to be commenced, sued, prosecuted, or awarded, either by the Attorney General of his Majesty, his Heirs or Successors, for the Time being, or by any Officer or Officers whatsoever for the Time being, or by any common Informer or other Person whatsoever, in any of his Majesty's Courts at *Westminster*, for or concerning any of the Offences, Penalties or Forfeitures aforesaid, shall be void and

(2.) This Act does not extend to *all* Proceedings on Penal Statutes. It only prohibits the Proceedings in the Courts of Westminster, in Cases where Actions, Bills, Plaints, Suits, or Informations might have been brought in Inferior Courts, (which Power is expressly given by Statute 5 Elizabeth, c. 4) and does not apply to 1 James I., respecting the searching of Leather, which only enables Justices of Assize, &c. to enquire of the Premises in their Sessions-Leets or Law-Days, and to hear and determine the same, and which can only be construed to mean the Common-Law Mode of Proceeding by Indictment or Presentment; Shipman *v.* Henbest, 4 T R. 109. In the Argument it was said, that according to this Construction the Act could only attach upon three Statutes, 5 and 6 Ed. VI. c. 14, (repealed by 12 Geo. III. c 31) 5 Eliz. c. 4. sec 39, and another not mentioned The only Penalty under Stat. Eliz. which had not fallen into Disuse, (that for exercising a Trade without having served an Apprenticeship) is taken away by Stat. 54 Geo. III. c. 96. The Statute does not give any new Jurisdiction to Inferior Courts; Farrington *v.* Keymer, Cro. Car. 112; Rex *v.* Galle, Carth. 465—4 T. R 116. See also Wms n. 1 Saund. 312

(3.) It is settled by several Cases, that this Statute restrains Actions being brought in the Courts at Westminster under the Stat. 5 Eliz., unless for Offences arising in Middlesex, where these Courts sit, although the contrary was formerly holden; see the Authorities cited Wms. n. 41 Saund. 112 It was usual to sue on that Statute in the Courts of the Counties Palatine, &c. in Cases arising there. As to the Course of Proceeding in the Courts of Oyer and Terminer, or Sessions, see Wms. n. ubi supra.

No. 4. 21 James I. c. 4.

of none Effect: any Law, Custom, or Usage to the contrary thereof notwithstanding.

Upon Default of proving that the Offence was committed in the same County, the Defendant shall be found Not guilty.

II. And be it further enacted by the Authority aforesaid, That in all Informations to be exhibited, and in all Bills, Counts, Plaints, and Declarations, in any Action or Suit to be commenced against any Person or Persons, either by or on the Behalf of the King, or any other, for or concerning any Offence committed or to be committed against any Penal Statute, the Offence shall be laid and alledged to have been committed in the said County where such Offence was in Truth committed, and not elsewhere: And if the Defendant to any such Information, Action, or Suit, pleadeth that he oweth nothing, or that he is not guilty; and the Plaintiff or Informer in such Information, Action or Suit, upon Evidence to the Jury that shall try such Issue, shall not both prove the Offence laid in the said Information, Action, or Suit, and that the same Offence was committed in that County; then the Defendant and Defendants shall be found not guilty.

The Informer shall make Oath that the Offence was committed in the same County where the Suit is commenced.

III. And be it further enacted by the Authority aforesaid, That no Officer or Minister in any Court of Record shall receive, file, or enter of Record any Information, Bill, or Plaint, Count, or Declaration, grounded upon the said Penal Statutes or any of them, which before by this Act are appointed to be heard and determined in their proper Counties, until the Informer or Relator hath first taken a corporal Oath (1) before some of the Judges of that Court, that the Offence or Offences laid in such Information, Action, Suit or Plaint, was or were not committed in any other County than where by the said Information, Bill, Plaint, Count, or Declaration the same is or are supposed to have been committed, and that he believeth in his Conscience the Offence was committed within a Year before the Information or Suit, within the same County where the said Information or Suit was committed, the same Oath to be there entered of Record.

The Defendant in an Information upon a Penal Statute may plead the General Issue.

IV. And be it also enacted by the Authority aforesaid, That if any Information, Suit, or Action, shall be brought or exhibited against any Person or Persons, for any Offence committed or to be committed against the Form of any Penal Law, either by or on the Behalf of the King, or by any other, or on the Behalf of the King and any other, it shall be lawful for such Defendants to plead the General Issue, that they are not guilty, or that they owe nothing, and to give such special Matter in Evidence to the Jury that shall try the same, which Matter being pleaded, had been a good and sufficient Matter in Law to have discharged the said Defendant or Defendants

(1) This Provision does not extend to Cases arising upon subsequent Statutes, French v. Coxen, 2 Str. 1031; more fully, Selwyn, N. P. Debt. In White v. Boot, 2 T. R. 274, Proceedings were stayed for want of an Affidavit being made as directed; but in Leigh v. Kent, 3 T. R. 360, the Court refused to set aside a Verdict on that Account, holding that the Application was too late; and the Court strongly intimated an Opinion that the Provision only applied where the Action might have been brought in inferior Courts, as directed by sec. 15.

No. 4.
21 James I, c. 4.

against the said Information, Suit or Action, and the said Matters shall be then as available to him or them, to all Intents and Purposes, as if he or they had sufficiently pleaded, set forth, or alledged the same Matter in Bar, or Discharge of such Information, Suit, or Action.

Certain Offences excepted

V. Provided always, That this Act, or any Clause contained therein, shall not extend to any Information, Suit, or Action, grounded upon any Law or Statute made against Popish Recusants, or for or concerning Popish Recusancy, or against those that shall not frequent the Church and hear divine Service; nor to any Information, Suit or Action, for Maintenance, Champerty, or Buying of Titles; nor to any Suit or Information grounded upon the Statute made in the first Year of the Reign of our Sovereign Lord the King, of a Subsidy granted to the King, of Tonnage, Poundage, Wool, &c. nor for or concerning the concealing, or defrauding the King, his Heirs or Successors, of any Custom, Tonnage, Poundage, Subsidy, Impost, or Prisage; or for transporting of Gold, Silver, Ordnance, Powder, Shot, Munition of all Sorts, Wool, Wool-fells or Leather, but that such Offence may be laid or alledged to be in any County, at the Pleasure of any Informer; any Thing in this Act to the contrary notwithstanding.

1 Jac. I. c. 33.

PART IV. CLASS XXII.

HUE AND CRY, AND OTHER ACTIONS AGAINST THE HUNDRED.

By 1st Geo I. st. 2, ch. 5, sec. 6, (usually called the Riot Act) if any Church or Chapel, or Building for religious Worship, certified according to the Toleration Act, Dwelling-house, Barn, Stable, or Outhouse, shall be demolished or pulled down, wholly or in part, by any Persons unlawfully, riotously and tumultuously assembled, as mentioned in the preceding Part of the Act, in case such Church, &c. shall be out of any City or Town that is either a County of itself, or not, within any Hundred, the Inhabitants of the Hundred shall [illegible] to Damages to the Persons injured and damnified, to be recovered by Action in the Courts at Westminster, against two or more of the Inhabitants of such Hundred, the Action for any Damage to any Church or Chapel to be brought in the Name of the Rector, Vicar, or Curate, in Trust for applying the Damages in rebuilding or repairing such Church or Chapel; and the Damages to be recovered shall, at the Request of the Plaintiff, be raised on the Inhabitants of the Hundred, and paid to the Plaintiff as directed by Statute 27th Elizabeth; and in case such Church, &c. shall be in any City or Town that is either a County of itself, or not, within any Hundred, the Damages to be recovered against any two or more of the Inhabitants of such City or Town, and the Damages at the Request of the Plaintiff to the Justices of the Peace of such City or Town, at any Quarter Sessions, to be levied on the Inhabitants, as directed by Statute 27th. Elizabeth.

By 9th Geo I. ch. 22, (the Black Act) Inhabitants of every Hundred shall make Satisfaction to all Persons for the Damages sustained by killing or maiming of any Cattle, cutting down or destroying any Trees, setting Fire to any House, Barn, Outhouse, Hovel, Cockmow, or Stack of Corn, Straw, Hay, or Wood, by any Offenders against the Act, and the Persons sustaining Damages are enabled to sue for such Damages, not exceeding £200, against the Inhabitants; and all other Inhabitants of the Hundred shall be rateably taxed towards an equal Contribution, for the Relief of the Inhabitants against whom Execution shall be made, to be levied as directed by Stat. 27 Elizabeth, sec. 7. No Persons to recover Damages, unless by themselves or their Servants they give Notice within two Days after to some of the Inhabitants of some Town, Village, or Hamlet, near the Place where the Fact shall be committed; and within four Days give their Examination upon Oath, or the Examination of their Servants that had the Care of their Houses, &c. before a Justice of Peace of the County, &c. where the Fact shall be committed, inhabiting within the Hundred, or near the same, whether they know the Persons who committed the Fact, or any of them; and if it be confessed that they do know the Person, they shall be bound by Recognizance to prosecute, Sect. 8. If any of the Offenders are convicted within six Months, the Hundred not to be liable; Sect. 9. The Action to be commenced within one Year.

By 11th Geo II. ch. 22, Provisions are made for punishing Persons for doing Violence, with Intent to hinder the Exportation of Corn, and by 36 Geo. III. ch. 9, similar Provisions are made to prevent Obstructions to the free Passage of Grain within the Kingdom, and the Acts respectively provide,

that the Hundred shall answer Damages not exceeding one hundred Pounds, as in Cases of Robbery. The Person injured is to give Notice within two Days, by himself or Servant, to a Constable of the Hundred, or the Constable of the Place in or near which the Fact was committed, and within ten Days after such Notice, giving in the Examination on Oath of himself or Servant present at the Time of the Fact, or having the Care of his Property, before a Justice of Peace, whether he knows the Persons who committed the Fact, or any of them, and if he do, then to enter in Recognizance to prosecute. If the Offender is convicted within twelve Months, the Hundred not to be liable. The Action not to be brought until after one Year, and to be commenced within two Years.

By 19 George II. c. 34, (for the Punishment of Persons going out armed

or on account of Duties not having been paid, or by virtue of any Law to prevent the Exportation of Wool and other Goods, or in endeavouring to apprehend any Offender against the Act, shall be beat, wounded, maimed or killed by any Offender against the Act, or the Wool or other Goods seized shall be rescued by Persons armed as in the Act is mentioned, the Inhabitants of the Rapes or Laths in the Counties divided into Rapes and Laths, or in other Counties the Inhabitants of Hundreds, shall make Satisfaction for Damages, and pay £100 for each Person killed to his Executors or Administrators: the Sum to be recovered for beating, wounding or maiming not to exceed £40, nor for Loss of Goods £200. The Inhabitants to be rateably assessed for Damages and Costs, and the Expence of defending the Action to be levied, &c. as by 8 George II. c. 16. and former Laws relating to Hundreds, and not repealed by that Act; and in case of Nonsuit or Judgment against the Plaintiff, the Costs necessarily expended in defending the Action, above taxed Costs, and the taxed Costs in case the Plaintiff be insolvent, to be levied in like Manner. Sect. 6.—Notice to be given to two or more Inhabitants within four Days, and Examination as to knowing the Offenders to be before a Justice within eight Days, and if known, a Recognizance to be entered into to prosecute, besides the Notice and Recognizance directed by 8 George II. in case of Robbery. Sect. 7.—Damages, &c. not to be recovered in case the Offender is apprehended and convicted within six Months. Sect. 8.—The Action to be commenced within a Year. Sect. 9.

By 52d. George III. ch. 130, intituled, "An Act for more effectual Punishment of Persons destroying the Properties of his Majesty's Subjects, and enabling the Owners of such Properties to recover Damages for the Injuries sustained," the wilfully or maliciously burning or setting fire to any Buildings, Erections or Engines used or employed in carrying on any Trade or Manufactory, or any Branch or Department of any Trade or Manufactory, or in which any Goods, Wares or Merchandize shall be warehoused or deposited, and the Offence of any Person unlawfully, riotously and tumultuously assembled, who shall unlawfully and with Force demolish or pull down any such Erection, Building or Engine, are made Felonies without Benefit of Clergy; and the Persons damnified by such demolishing such Building may recover Damages as directed by 1st Geo. I. st. 2. ch. 5. The same Directions are given as by that Act with respect to Notice and Examination; and the Action to be commenced within one Year.

Actions are also given against the Hundreds by 8th. Geo. II. ch. 20, for destroying Turnpikes, or Works on navigable Rivers; and by 10th. Geo. II. ch. 32 for cutting Hop-binds.

And by 56th. Geo. III. ch. 125, the Hundred is chargeable for Injuries sustained by riotously destroying or damaging Buildings, Engines and Machinery belonging to Collieries and other Mines, Waggon Ways, Bridges, and other Works used in conveying and shipping Coals and other Minerals.

Any Decisions upon these Acts will be noticed, with the Acts themselves in Part V.

For the Mode of proceeding in Actions against the Hundred, See Williams's Notes to Pinkney *v.* Inhabitants of East Hundred, in Rutland, 2 Saunders, 374.

No. 1.

Statute of Winton, 13 Edward I. stat. 2. (A) c. 1.—Fresh Suit shall be made after Felons and Robbers from Town to Town, &c.

No. 1.
13 Edward I.
stat. 2. c.

Ex Rot. in Turr. Lond. *m.* 41.

"FORASMUCH as from "Day to Day, Robberies, "Murthers, Burnings, and "Theft, be more often used "than they have been hereto-"fore, and Felons cannot "be attainted by the Oath of "Jurors, which had rather suf-"fer Strangers to be robbed, "and so pass without Pain, "than to indite the Offenders, "of whom great Part be Peo-"ple of the same Country, or "at the least, if the Offenders "be of another Country, the "Receivers be of Places near; "and they do the same, be-"cause an Oath is not given "unto Jurors of the same Coun-"try where such Felonies were "done, and to the Restitution "of Damages hitherto no Pain "hath been limited for their "Concealment and Laches:" 'Our Lord the King, for to 'abate the Power of Felons, 'hath established a Pain in 'this Case, so that from hence-'forth, for Fear of the Pain 'more than for Fear of any 'Oath, they shall not spare 'any, nor conceal any Felo-'nies; and doth command, 'That Cries shall be solemnly 'made in all Counties, Hun-'dreds, Markets, Fairs, and 'all other Places where great 'Resort of People is, so that 'none shall excuse himself by 'Ignorance, that from hence-'forth every Country be so 'well kept, that immediately, 'upon such Robberies and 'Felonies committed, fresh

PUR ceo qe de jour en jour roberies [*felonies*] homicides arsines plus sovenerement sunt fetes qe avaunt ne soleyent e felones ne pount estre ateintz par serment de jururs qi plus volunters suffrent felonies fetes as estraunges genz passer saunz peynes qe enditer meffessours dunt graunt parties sunt gent de mesmes la pais ou ameyns si les fessours sont doutre pais lour recetturs sunt del visne e ceo sunt ils per taunt qe serment nest mie hore ditte as jururs ne au pays ou les felonies furent fetes quant a restitucion des damages payne avant ne fu purveu pur lur concelement e lur lachesce nostre Seignur le Rey pur abatre le poer de feluns si establit peyne en ceu cas issi qe par paour de la peyne plus qe par paour de serement a nuli desoremes ne esparnient ne nule felonie ne concelent E comand que lempnement seit la criee fate en tuz cuntees hundrez marchez feyres e tuz autres leues ou solempne assemble des gentz sera issi qe nul par ignoraunce se pusse escuser. qe chescun pays issi desoremes seit garde qe meintenant apres roberies e felonies fetes seit fete si fresche sute de ville en ville & de pays en pays.

Li Rot in Turr. Lond. *m.* 41.

Suit shall be made from 'Town to Town, and from 'Country to Country.'

No. 1. 13 Edward I. stat. 2 c. 1

(B) c. 2.—Inquiry of Felons and Robbers, and the Country shall answer if they be not taken.

ET enquestes ensement seient fetes si mester est en viles par celui qi soverein est de la vile e pus en hundrez e en fraunchises e en cunteez e au trefois en deux trois ou en quatre cunteez en cas quaunt felonies serunt fetes en marche de cuntez issi qe meffesours pusent estre ateinz. E si le pais de tels manere de meffesours ne respoigne le payne serra tiel qe chescun pays cest a aver genz en pais demoraunz respoignent de roberies fetes(1.) e de damages issi qe tut le hundred ou la roberie serra fete ove les fraunchises qe sunt dedeins le preceynt de meisme la hundred respoignent de roberie fete. E si la roberie seit fete en devises dedenz hundrez respoignent ambedeus les hundrez ensemblement ove les fraunchises e plus long terme ne avera le pais apres la roberie e felonie fete qe xl. jours(2.) dedenz les quels il covendra qil facent gre de la roberie e du mefet ou qil respoignent de cors de mafesurs. (3.)

LIKEWISE, when Need requires, Inquests shall 'be made in Towns, by him 'that is Lord of the Town, 'and after in the Hundred, 'and in the Franchise, and in 'the County, and sometime in 'two, three, or four Counties, 'in case when Felonies shall 'be committed in the Marches 'of Shires, so that the Offen- 'ders may be attainted. And 'if the Country will not an- 'swer for the Bodies of such 'Manner of Offenders, the 'Pain shall be such, that every 'Country, that is to wit, the 'People dwelling in the Coun- 'try, shall be answerable for 'the Robberies done, and also 'the Damages; so that the 'whole Hundred where the 'Robbery shall be done, with 'the Franchises being within 'the Precinct of the same Hun- 'dred, shall be answerable for 'the Robberies done. And if 'the Robbery be done in the 'Division of two Hundreds, 'both the Hundreds and the 'Franchises within them shall

No. 1. 13 Edward I. stat. 2, c. 2. The Country shall answer for Robbers and Felons, if they be not apprehended

By 27 El. c. 13. s. 2. the Hundred where fresh Suit is not made shall answer half the Damages.

(1.) Q. If it be necessary to aver that the Robbery was committed in the Highway? Semble not. See Williams in 2 Saund. 376, n. 8 If a Man is assaulted in the Highway in one Hundred, and carried to a Coppice in another, and there robbed, the Action should be against the Hundred where the Robbery was committed; Couper v. Hundred of Basingstoke, 2 Lord Raym. 826, 2 Salk. 614. But no Action lies if the Robbery is committed in a House, S C and 7 Rep. 6, a. It need not be averred that the Robbery was committed in the Day-time, although it must be so proved; 1 Sho. 60, Carth 71. If there be sufficient Light to discern a Man's Countenance, though it be before Sun-rise or after Sun-set, it is sufficient; Ashpoole's Case, 7 Rep. 6, a; May v. Hundred of Morley, Cro Jac. 106

(2.) The Action is by Original Writ, which must not be brought until forty Days after the Robbery, Pierson v. Hundred of Westward, 3 Lev. 320. See Williams's Note, 2 Saund 375 (a) If any of the Robbers are taken before the Action is commenced, though it be Half a Year after the Robbery, the Hundred is discharged; Baskerville v. Hundred of Agbridge, 1 Sid. 11.

(3.) It is a sufficient Taking if the Robber be charged with the Rob-

Ex Rot. in Turr. Lond. *m.* 41.

No. 1.
13 Edward 1, stat. 2, c. 2.
A Robbery done in the Division of Shires.
The Country shall have but 40 Days.

'be answerable. And after 'that the Felony or Robbery 'is done, the Country shall 'have no longer Space than 'forty Days, within which 'forty Days it shall behove 'them to agree for the Robbery or Offence, or else that 'they will answer for the Bodies of the Offenders.'

bery in the Presence of a Justice of Peace, although no one lays Hands upon him; Mittin *v.* Hundred of Thistleworth, 1 Ventr. 118: or if he be found in Gaol for another Offence, and is indicted for that Robbery; though a Taking upon Suspicion, if he be acquitted, is not sufficient; Dyer, 370, a marg. But there must be a Taking, for it is no Plea for the Hundred to say that they made fresh Suit, if they do not add that they took some of the Offenders; Dyer, 370. a.

(C) c. 3.--This Act shall be respited until *Easter* next

(D) c. 4--At what Time the Gates of great Towns shall be shut, and when the Night Watch shall begin and end.

No. 1.
13 Edward 1, stat. 2, c. 4
At what time great Towns shall be opened and shut.

'AND for the more Surety 'of the Country, the 'King hath commanded, that 'in great Towns, being walled, the Gates shall be closed 'from the Sun-setting until the 'Sun-rising; and that no Man 'do lodge in Suburbs, nor in 'any Place out of the Town, 'from Nine of the Clock until 'Day, without his Host will 'answer for him. And the 'Bailiffs of Towns every 'Week, or at the least every 'Fifteenth Day, shall make 'Inquiry of all Persons being 'lodged in the Suburbs, or in 'foreign Places of the Towns. 'And if they do find any that 'have lodged or received any 'Strangers or suspicious Person, against the Peace, the 'Bailiffs shall do Right therein. 'And the King commandeth, 'That from henceforth Watches

E A plus seurer le pais ad le rey comaunde qe en les graunz viles qe sunt closes les portes seient fermes del solail rescuse deqes au solail levaunt e quel nul home ne herberge en suburbe ne enforein chiefs de la vile si de jour noun ne uncore de jour si le hoste ne voille pur lui respundre. E les baillifs de viles chescune semeine ou ameins quinzeime facent enquestes de genz herbergez en suburbes ou enforeines chefs de viles. E sil trovent nul herbergour qe resceive ou herberge en autre manere gent dunt suspeciun seit qil soient gent countre la pes si en facent les baillifs dreiture. E desoremes est comaunde qe veylles soient fetes issi cum auncienemenz soleyent estre ceo est asaver del jour de la Ascencion deqes

Ex Rot. in Turr. Lond. m. 41.
le jour seint Michel en chescun cite sis homes en chescune porte en chescun burgh par xii. homes en chescune vile en terre par vi. homes ou iiij. solon numbre des genz qi enhabitent e facent la veille continuelment tute la nuit del solail rescusse jeqes al solail levaunt. E si nul estraunge passe par eus seit arestu jeqes au matin e si nule suspeciun ne seit trove aille quites. E si om trove supeciun seit livere al viscunte maintenaunt e saunz daunger le receive e sauvement le garde jeqes ataunt qe en due manere seit delivre. E si eus ne se soeffrent pas estre aresteuz seit heu e cre leve sur eus e ceus qi funt la veille les siwent o tute la viles ove les visnees viles o heu e crid e vile en vile jeqes taunt qil serra pris e livrez au viscunte cum est avauntdit e pur le aresterment de tels estraunges nul ne seit enchesune.

No. 1.
13 Edward I, stat. 2, c. 4.

At what time the Night-watch shall begin and end.

be kept as it hath been used in Times passed, that is to 'wit, from the Day of the Ascension unto the Day of St. *Michael*, in every City Six 'Men shall keep at every 'Gate, in every Borough 'Twelve Men, every Town 'Six or Four, according to the 'Number of the Inhabitants of 'the Town, and shall watch 'the Town continually all 'Night, from the Sun-setting 'unto the Sun-rising. And if 'any Stranger do pass by 'them, he shall be arrested 'until Morning; and if no Sus'picion be found, he shall go 'quit; and if they find Cause 'of Suspicion, they shall forth'with deliver him to the She'riff, and the Sheriff may re'ceive him without Damage, 'and shall keep him safely, 'until he be acquitted in due 'Manner. And if they 'will not obey the Arrest, 'they shall levy Hue and Cry 'upon them, and such as keep 'the Watch shall follow with 'Hue and Cry with all the 'Town, and the Towns 'near, and so Hue and Cry 'shall be made from Town to Town, until that they be taken and delivered to the Sheriff, as before is said; and for the Arrestments of such Strangers none shall be punished.'

How they shall be used who disobey Arrests.

(E) c. 5. — The Breadth of Highways leading from one Market Town to another.

[Highways in Market-Towns shall be inlarged — A Park near unto the Highway.]

(F) c. 6.—That View of Arms be made. Hue and Cry shall be followed. Fairs or Markets shall not be kept in Church-yards.

No. 1.
13 Edward I, stat. 2, c. 6.

'AND further it is commanded, that every 'Man have in his House Harness for to keep the Peace after the ancient Assize; that to say, Every Man be-'tween Fifteen Years of Age, 'and Sixty Years, shall be as-'sessed and sworn to Armor 'according to the Quantity of 'their Lands and Goods; that 'is to wit, From Fifteen 'Pounds, Lands, and Goods 'Forty Marks, an Hauberke, 'a Breast-plate of Iron, a 'Sword, a Knife, and an 'Horse; and from Ten Pounds 'of Lands, and Twenty Marks 'Goods, an Haubeke, a 'Breast-plate of Iron, a Sword, 'and a Knife; and from Five Pound Lands, a Doublet, a 'Breast-plate of Iron, a Sword 'and a Knife; and from Forty 'Shillings Land, and more, 'unto One Hundred Shillings 'of Land, a Sword, a Bow 'and Arrows, and a Knife; 'and he that hath less than 'Forty Shillings yearly, shall 'be sworn to keep Gis-'arms, Knives, and other less 'Weapons; and he that hath 'less than Twenty Marks in 'Goods, shall have Swords, 'Knives, and other less Wea-'pons; and all other that may 'shall have Bows and Arrows 'out of the Forest, and in the 'Forest Bows and Boults. And 'that View of Armor be made 'every Year Two Times. And 'in every Hundred and Fran-'chise Two Constables shall 'be chosen to make the View 'of Armor; And the Con-'stables aforesaid shall present 'before Justices assigned such 'Defaults as they do see in

Ex Rot in Turr. Lond.

COMMAUNDE est ensement qe chescun home eit en sa mesun armure pur la pees garder solom la aunciene assise ceo est asaver qe chescun home entre quinze annz & seisaunte soit assis e jure as armes solum la quantite de lur terres e de lur chateus ceo est asaver a quinze liveres des terres e chateus de quarante marcs haubergeon chapel de feer espe cutel e cheval a diz liveres de terre e chateus de vynt marcs haubergeon chapel espe e cutel a cent soudeesz de terre parpoint chapel de feer espe e cutel a quaraunte soudeesz de terre e de plus jeqes a cent souz espe arks setes e cutel a qe meins ad de quaraunte souz de terre seit jure a fanchons gisarmes e cotauz e autres menues mes qui meins ad de chateus vynt marcs espees cuteus e autres menues armes E tuz les autres qui aver pount eient arcs e setes hors de forestes e dedenz forestes arcs e pilets. E qe veue es armes seit fete deus foiz par an. E en chescun hundred e fraunchise seyent eleus deus conestables a fere la veu des armes e les conestables avauntdiz presentent devaunt les justices assignez quaunt il vendrunt en pays les defautez qil averount trovez de armere e de suites de veilles e de cheminz E presentent ausi de genz qi herbergent genz estraunges en viles de uppelaund pur queus il ne volent respundre e les Justices assignez en chescun parlement representent au rey e le rey sur ceo en fra remedie. E bien se gardent desoremes viscuntes baillifs de fraunchises e de hors

Ex Rot in Turr. Lond.
greignurs ou maindres qi baillie ou foresterie unt en fee ou en autre manere qil siwent le cri ove le pays E solum ceo qil sunt eient chevaus e armeure a ceo fere E si nul seit qi ne le face seient les defautes presentez par les conestables as Justicez assignez e puis apres par eus au rey cum avaunt est dit. E comaunde le rey e defend qe feire ne marche desoremes ne seient tenuz en cimeter pur honur de seint eglise. Done a Wyncestre le utisme jour de Octobr' le an du regne le rey trezime

'the Country about Armor, 'and, of the Suits of Towns, 'and of Highways, and also 'shall present all such as do 'lodge Strangers in uplandish 'Towns for whom they will 'not answer; and the Justices 'assigned shall present at every 'Parliament unto the King 'such Defaults, as they shall 'find, and the King shall pro-'vide Remedy therein. And 'from henceforth let Sheriffs 'take good Heed, and Bailiffs, 'within their Franchises and 'without, be they higher or 'lower, that have any Baili-'wick or Forestry in Fee, or 'otherwise, that they shall 'follow the Cry with the 'Country, and after, as they 'are bounden, to keep Horses 'and Armor, or so to do; and if 'there be any that do not, the 'Defaults shall be presented 'by the Constables to the 'Justices assigned, and after, 'by them to the King, and 'the King will provide Re-'medy as afore is said. And 'the King commandeth and 'forbiddeth, that from hence-'forth neither Fairs nor Mar-'kets be kept in Churchyards, 'for the Honour of the Church. 'Given at *Winchester*, the 'Eighth of *October*, in the 'Thirteenth Year of the Reign 'of the King.'

No. 1. 13 Edward I. stat. 2, c. 6.

Fairs and Markets shall not be kept in Churchyards.

No. 2.

28 Edward III. c. 11.—Fresh Suit and Hue and Cry shall be made after Robbers from Country to Country.

ITEM pur ce qe grant clamour et grevouses pleintes sont faitz si bien par aliens come par denzeins qe marchantz & autres passantz parmi le Roialme dEngleterre od leur marchandises & autres biens sont tuez & derobbez &

"ITEM, Because that great "Clamour and grievous "Complaints be made, as "well by Aliens as by Deni-"zens, that Merchants and "other passing through the "Realm of *England* with their "Merchandises and other

No. 2. 28 Edward III. c. 11.

No. 2.
28 Edward 3, c. 11.

Ex Rot in Turr. Lond.

"Goods, be slain and robbed, "and namely now more than "they were wont, whereof Remedy hath not been made to "the Complaints;" 'Our Lord 'the King, considering the 'Profit which may come to 'the said Realm by coming 'and abiding of the said 'Merchants Aliens in the same 'Realm, and the Damage and 'Mischief which to them and 'other is done daily by such 'Manslaughters and Robberies, 'and willing to provide for the 'Surety and Indempnity of 'Merchants and other aforesaid, hath ordained and 'established, by the Assent of 'all his Parliament, to the 'Intent that Merchants Aliens 'shall have the greater Will 'and Courage to come into 'the said Realm of *England*, 'and that Remedy from henceforth be speedily made to such Merchants and other robbed, according to the 'Form contained in the Statute 'late made at *Winchester*; that 'is to say, that solemn Cry be 'made in all Counties, Hundreds, Markets, Fairs, and 'all other Places, where solemn 'Assembly of the People shall 'be, so that none by Ignorance 'shall excuse him, that every 'Country from henceforth be 'so kept, that immediately 'after Felonies and Robberies 'done, fresh Suit be made 'from Town to Town, and 'from Country to Country, 'and Inquest, if Need be, 'shall be also taken in the 'Towns by him which is Sovereign of the Town, and after 'in Hundreds, Franchises, 'and in the County, and sometime in two, three, or four 'Counties, in case when Felo-

13 Ed. 1. stat. 2. c. 1, 2, & 6.

nicement ore plus qils ne soleient dount remedie nad este fait as compleignantz nostre Seignur le Roi considerant le profit qe purra avenir au dit Roialme par venue & demoere des marchantz aliens en meisme le Roialme & les damages & meschiefs qe a eux & autres sont faitz de jour en autre par tieux homicides & robberies & veullant purvoire a la seurte & indempnite des marchantz & autres susditz ad ordene et establi par assent de tout son parlement au fin qe marchantz aliens eient greindre volunte & corage de venir en le dit Roialme dEngleterre qe remedie soit desore fait hastivement as tieux merchantz & autres issint derobbez solonc la forme contenue en lestatut nadgairs fait a Wyncestre cest assavoir qe solempnement crie soit fait en toutz contees hundredes marchees feires & toutz autres lieux ou solempne assemblee de gentz serra Issint qe nul par ignorance se pusse excuser qe chescune pais issint desoremes soit garde qe meintenant apres robberies & felonies faites soit fait freshe seute de ville en ville & de pais en pais & enquestes soient auxint si mestiere soit prises en villes par celui qe est sovereign de la ville & puis en hundredes franchises & en contees & ascune foitz en deux trois ou quatre contees en cas quant felonies serront faites en marches des contes, Issint qe meffesours pussent estre atteintz. Et si le pais de tieu manere de meffesours ne respoigne la peine serra tiele qe chescune pais cest assavoir gentz en pais demorantz respoigne des robbe-

Ex Rot. in Turr. Lond.

ries faites & des damages issint qe tout le hundred ou la robberie serra faite ove les franchises qe sont deinz la purceinte de meisme le hundred respoignent de la robberie faite & si la robberie soit faite en divises de deux hundredes respoignent ambedeux les hundredes ensemblement od les franchises • Et plus long terme navera le pais apres la robberie faite ou felonie qe quarant jours deinz les queux il covient qils facent gre de la robberie ou del meffait ou qils respoignent des corps de mesfesours.'

No 2

28 Edward III c. 11.

'ries shall be done in the Marches of the Counties, so that the Offenders may be attainted. And if the Country do not answer of such Offenders, the Pain shall be such that every Country, that is to say, the People dwelling in the Country, shall answer of the Robberies done, and of the Damages; so that all the Hundred where the Robbery shall be done, or the Franchises which be within the Precinct of the same Hundred, shall answer of the Robbery done; and if the Robbery be done in the Division of two Hundreds, both Hundreds shall answer together with the Franchises. • And longer Term shall not the Country have after the Robbery or Felony done, than Forty Days, within which them behoveth to make Gree of the Robbery, or of the Offence, or that they answer of the Bodies of the Offenders.'

The Penalty of the Country if Robbers offending therein be not taken within Forty Days.

No 3.

27 Elizabeth, c. 13. — An Act for the following of Hue and Cry.

No. 3.

27 Elizabeth, c. 13.

Hue and Cry, how and by whom to be made, and the Penalty for Default thereof, &c.

'WHEREAS by two ancient Statutes, the one made in the Parliament holden at *Winchester* in the thirteenth Year of the Reign of King *Edward* the First, and the other in the eight and twentieth Year of the Reign of King *Edward* the Third, it was for the better Repressing of Robberies and Felonies (amongst other Things) enacted to this Effect, That if the Country do not answer for the Bodies of such Malefactors, that then the Pain should be such, that is to wit, That the People dwelling in the Country shall be answerable for the Robberies done, and the Damages, so that the whole Hundred where the Robbery shall be done, with the Franchises which are within the Precinct of the same Hundred, shall answer the Robberies done; and if the Robbery chance to be done in the Division of two Hundreds, that then both the Hundreds together, with the Franchises within the Pre-

The Effects of Statutes touching answering for Robbery.

No. 3.
27 Elizabeth, c. 13.

'cinct of them, shall be answerable, as in the said two several 'Statutes it doth more at large appear:

Several Inconveniencies ensuing the aforesaid Statutes, touching Hue and Cry.

'II. Forasmuch as the said Parts of the said several Statutes being of late Days more commonly put in Execution, 'than heretofore they have been, are found by Experience to 'be very hard and extreme to many of the Queen's Majesty's 'good Subjects, because by the same Statutes they do remain 'charged with the Penalties therein contained, notwithstanding their Inability to satisfy the same, and though they do as 'much as in Reason might be required in pursuing such Malefactors and Offenders, whereby both large Scope of Negligence is given to the Inhabitants and Resiants in other Hundreds and Counties, not to prosecute the Hue and Cry made, 'followed, and brought unto them, by reason they are not 'chargeable for any Portion of the Goods robbed, nor with any 'Damages in that Behalf given, and also great Encouragement 'and Emboldening is likewise given unto the Offenders, 'to commit daily more Felonies and Robberies, as seeing it in 'manner impossible for the Inhabitants and Resiants of the said 'Hundred and Franchises wherein the Robbery is committed, 'to apprehend them without the Aid of the other Hundreds and 'Counties adjoining; and for that also the Party robbed having 'Remedy by the aforesaid Statutes for the Recovering of 'his Goods robbed and Damages against the Inhabitants and 'Resiants of the Hundred wherein the Robbery was committed, is many Times negligent and careless in prosecuting and 'pursuing the said Malefactors and Offenders:' Our Sovereign Lady the Queen's Majesty, not willing therefore that her People should be impoverished by any such Pain or Penalty which should be hard or grievous to them, and having special regard to abate the Power of Felons, and to repress Felonies, doth for Remedy hereof, with the Consent of the Lords Spiritual and Temporal, and of the Commons in this present Parliament assembled, and by the Authority of the same Parliament, establish and enact, That the Inhabitants and Resiants of every or any such Hundred (with the Franchises within the Precinct thereof) wherein Negligence, Fault or Defect of Pursuit and fresh Suit, after Hue and Cry made, shall happen to be, from and after forty Days next after the End of this present Session of Parliament, shall answer and satisfy the one Moiety or Half of all and every such Sum and Sums of Money and Damages, as shall by Force or Virtue of the said Statutes or either of them be recovered or had against or of the said Hundred, with the Franchises therein, in which any Robbery or Felony shall at any Time hereafter be committed or done: And that the same Moiety shall and may be recovered by Action of Debt, Bill, Plaint, or Information, in any of the Queen's Majesty's Courts of Record at *Westminster*, by and in the Name of the Clerk of the Peace for the Time being, of or in every such County within this Realm, where any such Robbery and Recovery by the Party or Parties robbed shall be, without naming the Christian Name or Surname of the same Clerk of the

The Inhabitants of the Hundred where fresh Suit shall not be made, shall answer half Damages.

The Moiety shall be recovered by the Clerk of the Peace.

Peace; which Moiety so recovered shall be to the only Use and Behoof of the Inhabitants of the said Hundred where any such Robbery or Felony shall be committed or done.

No. 3. 27 Elizabeth, c. 13.

III. And be it further enacted by the Authority aforesaid, That if any Clerk of the Peace, of or in any County within this Realm, shall at any Time hereafter commence or prefer any such Suit, Action, or Information, and shall after the same so sued, commenced or preferred happen to die or to be removed out of his Office, before Recovery and Execution had: That yet no such Action, Suit, Bill, Plaint, or Information, sued, commenced or preferred, shall by such Displacing or Death be abated, discontinued or ended; but that it shall and may be lawful to and for the Clerk of the Peace next succeeding in the said County, to prosecute, pursue and follow all and every such Action, Bill, Plaint, Suit and Information, for the Causes aforesaid, so hanging and depending in such Manner and Form, and to all Intents and Purposes, as that Clerk of the Peace might have done which first commenced or preferred the said Suit, Bill, Plaint or Information.

The Death or removing of the Clerk of the Peace shall not cease the Suit.

'IV. And although the whole Hundred, where such 'Robberies and Felonies are committed, with the Liberties 'within the Precinct thereof, are by the said two former Statutes 'charged with the answering to the Party robbed his Damages; yet nevertheless the Recovery and Execution by and for 'the Party or Parties robbed, is had against one or a very few 'Persons of the said Inhabitants, and he and they so charged, 'have not heretofore by Law had any Mean or Way to have 'any Contribution of or from the Residue of the said Hundred 'where the said Robbery is committed, to the great Impove'rishment of them against whom such Recovery or Execution 'is had:'

V. For Remedy whereof, be it enacted by the Authority aforesaid, That after Execution of Damages by the Party or Parties so robbed had, it shall and may be lawful (upon Complaint made by the Party or Parties so charged) to and for two Justices of the Peace (whereof one to be of the *Quorum*) of the same County inhabiting within the said Hundred, or near unto the same, where any such Execution shall be had, to assess and tax rateably and proportionably, according to their Discretions, all and every the Towns, Parishes, Villages and Hamlets, as well of the said Hundred where any such Robbery shall be committed, as of the Liberties within the said Hundred, to and towards an equal Contribution to be had and made for the Relief of the said Inhabitant or Inhabitants, against whom the Party or Parties robbed before that Time had his or their Execution: And that after such Taxation made, the Constables, Constable, Headboroughs or Headborough of every such Town, Parish, Village and Hamlet, shall by Virtue of this present Act have full Power and Authority within their several Limits, rateably and proportionably to tax and assess according to their Abilities, every Inhabitant and Dweller in every such Town, Parish, Village and Hamlet, for and

A Remedy for those against whom Recovery and Execution is had, to have Contribution.

The Taxation of the Towns by the Justices.

The Taxation of the Inhabitants by the Constables.

No. 3.
27 Elizabeth, c. 13.

towards the Payment of such Taxation and Assessment, as shall be so made upon every such Town, Parish, Village and Hamlet as aforesaid, by the said Justices: And that if any Inhabitant of any such Town, Parish, Village or Hamlet, shall obstinately refuse and deny to pay the said Taxation and Assessment, so by the said Constables, Constable, Headboroughs or Headborough taxed and assessed; That then it shall and may be lawful to and for the said Constables and Headboroughs and every of them within their several Limits and Jurisdictions, to distrain all and every Person and Persons so refusing and denying, by his and their Goods and Chattels; and the same Distress to sell, and the Money thereof coming to retain to the Use aforesaid; and if the Goods or Chattels so distrained and sold shall be of more Value than the said Taxation shall come unto, that then the Residue of the said Money, over and above the said Taxation, shall be delivered unto the said Person or Persons so distrained.

Distraining and Sale of Distress for Default of Payment.

VI. And be it further enacted, That all and every the said Constables and Headboroughs, after that they have within their several Limits and Jurisdictions levied and collected their said Rates and Sums of Money so taxed, shall within ten Days after such Collection, pay and deliver the same over unto the said Justices of Peace or one of them, to the Use and Behoof of the said Inhabitant or Inhabitants for whom such Rate, Taxation and Assessment shall be had or made as aforesaid; which Money so paid shall by the Justices or Justice receiving the same, be delivered over (upon Request made) unto the said Inhabitant or Inhabitants to whose Use the same was collected.

The Constables shall deliver the Money collected to the Justices.

VII. And be it further enacted by the Authority aforesaid, That the like Taxation, Assessment, Levying by Distress and Payment, as aforesaid, shall be had and done within every Hundred where Default or Negligence of Pursuit and fresh Suit shall be, for and to the Benefit of all and every Inhabitant and Inhabitants of the same Hundred where such Default shall be, that shall at any Time hereafter by Virtue of this present Act have any Damages or Money levied of them, for or to the Payment of the one Moiety or Half of the Money recovered against the said Hundred where any Robbery shall be hereafter committed.

Levying of the Contribution in the Hundred where Default of Pursuit shall be.

VIII. Provided also, and be it further enacted by the Authority aforesaid, That where any Robbery is or shall be hereafter committed by two or a greater Number of Malefactors, and that it happen any one of the said Offenders to be apprehended by Pursuit to be made according to the said former mentioned Laws and Statutes, or according to this present Act: That then and in such Case, no Hundred or Franchise shall in any wise incur or fall into the Penalty, Loss or Forfeiture mentioned either in this present Act or in any the said former Statutes, although the Residue of the said Malefactors shall happen to escape, and not to be appre-

No Penalty where any of the Offenders be apprehended.

No. 3. 27 Elizabeth, c. 13.

hended; any thing in this Statute, or in the said former Statutes to the contrary notwithstanding.

The Suit shall be commenced within one Year after the Robbery.

IX. Provided also, That no Person or Persons hereafter robbed shall take any Benefit by Virtue of any the said former Statutes to charge any Hundred where any such Robbery shall be committed, except he or they so robbed shall commence his or their Suit or Action within one Year next after (1) such Robbery so to be committed.

In what Sort Hue and Cry, and Pursuit of Felons shall be made.

X. And be it further enacted by the Authority aforesaid, That no Hue and Cry, or Pursuit hereafter to be done or made by the Country, or Inhabitants of any Hundred, shall be allowed and taken to be a lawful Hue and Cry or Pursuit upon or after any the said Felons or Offenders, except the same Hue and Cry or Pursuit be done and made by Horsemen and Footmen, any Usage or Custom to the contrary notwithstanding.

The Party robbed shall give Notice thereof to the Inhabitants of some Town, &c.

XI. And be it further also enacted by the Authority of this present Parliament, That no Person or Persons that shall hereafter happen to be robbed shall have or maintain any Action or take any Benefit by Virtue of the said two mentioned Statutes or either of them, except the same Person and Persons so robbed shall with as much convenient Speed as may be, give Notice and Intelligence (2) of the said Felony or Robbery so committed unto some of the Inhabitants of some Town, Village or Hamlet near unto the Place where any such Robbery shall be committed, nor shall bring or have any Action upon and by virtue of any the Statutes aforesaid, except he or they shall first within twenty Days (3) next before such Action to be brought be examined upon his or their corporal Oath, to be taken before some one Justice of the Peace of the County (4) where the Robbery was committed, inhabiting within the said Hundred where the Robbery was committed, or near unto the same, whether he or they do know (5.) the Parties that com-

The Party robbed examined before a Justice, whether he knew any of the Offenders.

(1) The Day of the Robbery is included, therefore in case of a Robbery committed on the 9th. of October, an Action commenced on the 9th. of October following is too late, Norris *v.* H. of Gawtry, Hob. 139 cited Doug. 465, 3d Edit. The Plaintiff must produce a Copy of the Original, to shew that the Action was commenced in Time. Wms Saund. 375, b. n. But this apparently cannot be necessary if it appears by the Record that the Action was commenced in Time.

(2) It is not necessary to state the Notice and Oath in the Declaration; Dowley *v.* Hundred of Odium, 2 Salk. 614. If stated, it is not necessary to allege that the Justice was such at the Time of the Oath being taken, Merrick *v.* H. of Palston Temp. Hard. 409, Andr. 115.

(3) If the Action be discontinued and a new one commenced, the Oath must be within twenty Days previous to the Commencement of the second Action. Newman *v.* Inhab. of Stafford, 1 Sid. 139.

(4) The Oath may be taken out of the County, Hallier *v.* Hundred of Benhurst. W. Jones, 299, Cro. Car. 211.

(5) If the Servant be robbed the Oath must be taken by him. Judgment was arrested, the Oath being stated to be taken by the Master on the Robbery of the Servant, Green's Case, Cro. Eliz. 142, 1 Leon. 323, Raymund *v.* H. of Oaking, Cro. Car. 38, 336. If two Servants are robbed, both must take the Oath. Ashcomb *v.* H. of Eltham, 3 Mod. 288. Ashcomb *v.* H. of Spelholme, (S. C.) 1 Sho. 94, 241. But the Master may recover as to so much

No. 3. 27 Elizabeth, c. 13.

mitted the said Robbery, or any of them: (6.) And if upon such Examination it be confessed that he or they do know the Parties that committed the said Robbery, or any of them, That then he or they so confessing shall, before the said Action be commenced or brought, enter into sufficient Bond by Recognizance before the said Justice before whom the said Examination is had, effectually to prosecute the same Person and Persons so known to have committed the said Robbery, by Indictment, or otherwise, according to the due Course of the Laws of this Realm.

as was in the Possession of the Servant who took the Oath; Ashcomb v. H. of Eltham, (or Speldhurst,) Carth. 145; 3 Mod. 287; 2 Salk. 613. If the Master delivers Part of the Money to the Servant, and they are robbed together, the Oath may be by the Master. If the Servant deliver Part of the Money to another, and they are robbed together, and the Action is brought as it may be by the Servant in respect of his Possession, his Oath is sufficient; S. C.; Combes v. H. of Bradley, 4 Mod. 303.

(6.) Though he knows the Offenders, he may maintain the Action; Noy, 150.

No. 4.

B. 29 Charles II. c. 7. — An Act for the better Observation of the Lord's Day, commonly called *Sunday*.

No. 4. 29 Charles II. c. 7.

The Hundred not responsible to Persons travelling on the Lord's Day; but shall make fresh Suit after the Offenders.

V. PROVIDED, and be it further enacted by the Authority aforesaid, That if any Person or Persons whatsoever which shall travel upon the Lord's Day shall be then robbed, That no Hundred or the Inhabitants thereof shall be charged with or answerable for any Robbery so committed, but the Person or Persons so robbed shall be barred from bringing any Action for the said Robbery; any Law to the contrary notwithstanding: Nevertheless, the Inhabitants of the Counties and Hundreds (after Notice of any such Robbery to them or some of them given, or after Hue and Cry for the same to be brought) shall make or cause to be made fresh Suit and Pursuit after the Offenders, with Horsemen and Footmen, according to the Statute made in the twenty-seventh Year of the Reign of Queen *Elizabeth*, upon Pain of forfeiting to the King's Majesty, his Heirs and Successors, as much Money as might have been recovered against the Hundred by the Party robbed if this Law had not been made. (1.)

27 Eliz. c. 13.

(1.) This does not extend to Persons robbed in going to Church; Taskmaster v. H. of Edmonton, 1 Str. 406.

No. 5.

8 George II. c. 16. — An Act for the Amendment of the Law relating to Actions on the Statute of Hue and Cry.

No. 5. 8 George II. c. 16.

WHEREAS by the Laws now in being, the Proceedings upon a Statute made in the thirteenth Year of the

No. 5
8 George II. c. 16

'Reign of King *Edward* the First, commonly called "The Statute of Hue and Cry," and another Statute made in the twenty-seventh Year of the Reign of Queen *Elizabeth*, intituled, "An Act for the following of Hue and Cry," are attended with many and great Inconveniencies to the Subjects.' For Remedy thereof be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of *June* in the Year of our Lord one thousand seven hundred and thirty-five, no Person or Persons shall have or maintain any Action against any Hundred, or take any Benefit by virtue of the said Statutes, or either of them, unless he, she or they, shall, over and besides the Notice already required by the last of the above-mentioned Statutes to be given of any Robbery, with as convenient Speed as may be (1.) after any Robbery on him, her or them committed, give Notice thereof to one of the Constables of the Hundred, or to some Constable, Borsholder, Headborough, or Tythingman of some Town, Parish, Village, Hamlet, or Tything, near (2.) unto the Place wherein such Robbery shall happen, or shall leave Notice in Writing of such Robbery at the Dwelling-house of such Constable, Borsholder, Headborough or Tythingman, describing in such Notice, to be given or left as aforesaid, so far as the Nature and Circumstances of the Case will admit, the Felon or Felons (3.) and the Time and Place of the Robbery, and also shall, within the Space of twenty Days next after the Robbery committed, cause publick Notice to be given thereof in the *London Gazette*, therein likewise describing, so far as the Nature and Circumstances of the Case will admit, the Felon or Felons, and the Time and Place of such Robbery, together with the Goods and Effects

Preamble, reciting the Acts 13 Edw. I. [illegible] 2. c. 1 & 2. and 27 Eliz. c. 13.

After 24 June 17[illegible] [illegible] to sue the Hundred for a Robbery

without giving [illegible] to a Constable, &c. describing the Felon,

and publishing the Case in the London Gazette within 20 Days after the Robbery,

(1.) The Plaintiff being robbed at the Distance of two Miles and a Half from Northampton at six o'Clock, the Highwayman cut his Bridle and Stirrups, threw them into a Ditch, and turned his Horse loose. The Plaintiff recovered them, remounted, rode through a Village, where he gave no Notice, met three Men on the Road, whom he informed of the Robbery, and arrived at Northampton at seven, and gave Notice to an Innkeeper there, from whence he went to a Place about three Miles off, where the High Constable lived, and between eight and nine gave Notice, which was held sufficient. Ball v. H. of Wymersley, 2 Str. 1170. In the Note of this Case, B. N. P. 185, it is said, that possibly he went to Northampton for Advice, for Men do not carry the Act of Parliament in their Pocket. I remember a Case before Lord Kenyon, in which he considered an immediate and strict Compliance with the Directions of the Act as throwing a Suspicion on the Credit of the Party with respect to the Fact of the Robbery; observing, that if he had himself been robbed, he should have known that some preliminary Steps were necessary, but should not have known exactly what they were.

(2.) In the Case mentioned in the last Note, it was held that the Place where the High Constable lived was sufficiently near.

(3.) The omitting to mention that the Robber had [illegible] Eye-brows was held fatal. Whitworth v. H. of Grimshoe, 2 Wils. 11[illegible].

No. 5. 8 George II. c. 16.

(4.) whereof he, she or they was or were robbed; and shall also, before any such Action be commenced, go before the Chief Clerk or Secondary, or the Filazer of the County wherein such Robbery shall happen, or the Clerk of the Pleas of that Court wherein such Action is intended to be brought, or their respective Deputies, or before the Sheriff of the County wherein the Robbery shall happen, and enter into a Bond to the (5.) High Constable or High Constables of the Hundred in which such Robbery shall be committed, in the Penal Sum of one hundred Pounds, with two sufficient Sureties to be approved of by such Chief Clerk, Secondary, Filazer, or Clerk of the Pleas, or their respective Deputies, or the Sheriff of the said County, with Condition for securing to such High Constable or High Constables (who are hereby impowered and required to enter, or cause to be entered, an Appearance, and also to defend such Action, as hereinafter is mentioned) the due Payment of his or their Costs, after the same shall be taxed by the proper Officer, in case that he, she or they (the Plaintiff or Plaintiffs in such Action) shall happen to be nonsuited, or shall discontinue his, her or their Action, or in case that Judgment shall be given against such Plaintiff or Plaintiffs on Demurrer, or that a Verdict shall be given against him, her or them.

and giving Security of 100l. to the High Constable, to pay Costs, if lost.

II. And be it enacted by the Authority aforesaid, That when any such Bond, as above-mentioned, shall be entered into before the said Sheriff, such Sheriff shall immediately certify the same in Writing to the chief Clerk or Secondary in the Court of King's Bench, or his or their Deputy, or to the Filazer of that County wherein such Robbery shall be committed, or his Deputy, in case the Action be intended to be brought in the Court of Common Pleas, or if in the Court of Exchequer, to the Clerk of the Pleas, or his Deputy; which Certificate shall be delivered by the Party or Parties robbed, to the said chief Clerk or Secondary, or his or their Deputy, or to such Filazer, or his Deputy, or to such Clerk of the Pleas, or his Deputy, before any Process shall issue for the Commencement of such Suit as aforesaid; and such chief Clerk, Secondary, Filazer or Clerk of the Pleas, or their respective Deputies, or the said Sheriff, shall not take any greater Fee or Reward for making such Bond than five Shillings over and above the Stamp Duties; nor shall any Sheriff take any greater Fee or Reward for making, nor shall any such chief Clerk, Secondary, Filazer or Clerk of the Pleas, or their respective Deputies, take any greater Fee or Reward for receiving and filing such Certificate than two Shillings and six Pence; and such chief Clerk, Secondary, Filazer or Clerk of the Pleas, or their respective Deputies, and Sheriff as aforesaid, are hereby

The Sheriff to certify such Bond,

and the Certificate thereof to be delivered to the chief Clerk, &c. before Process granted.

The Fees.

The Bond to be delivered gratis to the High Constable.

(4) The Notice should contain a full Description of the Goods, as of the Dates and Numbers of Bank Notes, if known; Chandler v. H. of Sunning, Barnes 458—B. N. P. 186. but the Court was divided as to whether he can recover so much as is well described. the better Opinion seems to be, that he cannot, Whitworth v. H. of Grimsho, 2 Wil. 109

(5) It is sufficient to allege, that a Bond was given to A. B. High Constable, without averring that there was only one.

required to deliver over *gratis* (upon reasonable Request made for that Purpose) all and every such Bonds, to be by them respectively taken pursuant to this present Act, to the High Constable or High Constables to whose Use the same shall be taken as aforesaid.

No. 5. 8 George II. c. 16.

III. And be it further enacted by the Authority aforesaid, That no Hundred, or Franchise therein, shall be chargeable by virtue of the above mentioned or any other Statute, if one or more of the Felons, by whom such Robbery shall be committed, be apprehended within the Space of forty Days next after such publick Notice given in the *London Gazette* as aforesaid.

Hundred not chargeable, if one of the Felons be apprehended in 40 Days after Notice in the Gazette.

IV. Be it likewise enacted by the Authority aforesaid, That no Process for Appearance in any Action to be brought upon the said Statutes, or either of them, against any Hundred, shall be served on any Inhabitant thereof, save only upon the High Constable or High Constables of the Hundred, wherein the Robbery shall happen, who is and are hereby required to cause publick Notice thereof to be given in one of the principal Market Towns within such Hundred on the next Market Day after he or they shall be served with such Process, or if there shall happen to be no Market Town within such Hundred, then in some Parish Church within the same Hundred immediately after Divine Service, on the *Sunday* next after his or their being served with such Process, and he or they is and are also hereby empowered and required to enter, or cause to be entered, an Appearance in the said Action, and also defend the same for and on Behalf of the Inhabitants of the said Hundred, as he or they shall be advised; and in case the Plaintiff or Plaintiffs in such Action shall recover and obtain Judgment therein, that then no Process of Execution shall be served on any particular Inhabitant or Inhabitants of the said Hundred, or any Franchise within the Precinct thereof, nor on the said High Constable or High Constables; but the Sheriff or his Officer shall, upon the Receipt of any Writ or Writs of Execution to him directed in pursuance of the said Judgment (instead of serving the said Writ or Writs on any Inhabitant or Inhabitants) cause the same to be produced and shewn *gratis* unto two Justices of the Peace of the County, Riding or Division (whereof one to be of the *Quorum*) and residing within the said Hundred, or near unto the same, who(1.) shall thereupon with all convenient Speed cause such Taxation and Assessment to be made, and to be levied and collected in such Manner as is prescribed in and by the aforesaid Statute made in the twenty-seventh Year of the Reign of Queen *Elizabeth*, in

High Constables only to be served with the Process,

who is to give publick Notice thereof on the next Market Day,

or in the Parish Church,

and shall enter Appearance;

if the Plaintiff recover,

the Sheriff to shew the Writ of Execution to Two Justices

who are to tax and levy the Charges as by stat. 27 Eliz. c. 34.

22 G. 2. c. 46.

(1.) It is sufficient for the Sheriff to return that after the sixty Days, he had delivered the Writ to the Justices of the Hundred, and that they had done nothing upon it. The next Proceeding is against the Justices; Wright *v.* St. Augustine's Lath, 13 East, 544. It would certainly be convenient to provide, in all these Cases, that instead of a specific Rate, the High Constable should, by order of Justices of Peace, add the Sum to be levied to the general Roll for the County Rate.

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8 George II. c. 16.

which Taxation and Assessment there shall be provided for and included, over and above what the Costs and Damages recovered by the Plaintiff or Plaintiffs in such Action shall amount to, all such just and necessary Expences which any High Constable or High Constables of any Hundred hath or have been, or shall be at, in having defended any such Action as aforesaid, Claim being made thereto by such High Constable or High Constables before the said Justices, upon due Notice being given to him or them by the said Justices for that Purpose; and the Sums of Money so to be levied and collected, shall be paid over and delivered (by such Officer or Officers, as by the said Statute made in the twenty-seventh Year of the Reign of Queen *Elizabeth* are to levy and collect the same) within ten Days after such Collection, to the Sheriff of the County wherein the Robbery shall happen, to the Use and Behoof of the Plaintiff or Plaintiffs in such Action, for so much as the Costs and Damages by him, her or them recovered shall amount to, and to the Use and Behoof of the said High Constable or High Constables, for so much as his or their Expences in defending the said Action shall amount to, of which the said High Constable or High Constables shall give in an Account, and make due Proof upon Oath, to the Satisfaction of the said Justices, before any Taxation and Assessment shall be made for the reimbursing such High Constable or High Constables (which Oath the said Justices are hereby authorized and required to administer, and shall in such Expences have no further Allowance toward paying an Attorney to defend the said Action, than what such Attorney's Bill shall be taxed at by the proper Officer of that Court where such Action shall be brought, which the said High Constable or High Constables shall cause to be taxed for that Purpose.

The Money to be paid in 10 Days after Collection, to the Sheriff, for the Use of the Plaintiff, &c.

V. And be it also enacted by the Authority aforesaid, That the Sum or Sums of Money which shall be paid over and delivered to the Sheriff of the County, as is herein before mentioned, shall (upon reasonable Request made) be by him paid and delivered over to the several Parties who shall be intitled to receive the same, without any Deduction, Fee or Reward whatsoever.

The Money to be paid without Fees.

VI. And that sufficient Time may not be wanting for such Taxation and Assessment to be duly made, and for the Money to be levied and collected thereupon, after such Writ or Writs of Execution shall be shewn to such Justices, and before the Sheriff shall be obliged to make a Return thereof: Be it enacted by the Authority aforesaid, That no Sheriff shall be called upon or required to make any Return to any such Writ or Writs of Execution, as shall issue or be made out upon any Judgment, which shall be recovered in an Action brought against any Hundred, by virtue of the above mentioned Statutes, or either of them, until after the Expiration of sixty Days next after the Day whereupon such Writ or Writs shall be delivered to the said Sheriff, who is hereby required to in-

Sheriff not obliged to make a Return to the Writ, till 60 Days after Delivery.

dorse, on the Back thereof, the Day on which he received the same.

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How the High Constable shall be reimbursed if the Plaintiff be nonsuited, &c.

'VII. And whereas it is reasonable that the said High 'Constable or High Constables should be indemnified as to all 'Charges which he or they should necessarily expend in de-'fending any Suit in pursuance of this present Act, and that 'Provision should be made for reimbursing him or them, not 'only all such Expences as shall be over and above the taxed 'Costs to be paid by the Plaintiff or Plaintiffs in case of a Non-'suit, or Discontinuance, or Judgment or Demurrer against 'him, her or them, or Verdict for the Defendants, as afore-'said, but even such taxed Costs also, in case the Plaintiff or 'Plaintiffs, and his, her or their Sureties, who shall be bound 'for the Payment thereof, shall happen to become insolvent;" Be it therefore enacted by the Authority aforesaid, That if any Plaintiff or Plaintiffs, in any Action to be brought against any Hundred upon the Statutes above-mentioned, or either of them, shall be non-suited, or shall discontinue his, her or their Action, or shall have a Judgment or Demurrer given, or a Verdict pass against him, her or them, it shall and may be lawful for any two Justices of the Peace (such as are herein before mentioned) upon Complaint to them made for that Purpose, and upon an Account given in by such High Constable or High Constables, and Proof made upon Oath to the Satisfaction of the said Justices of such Expences necessarily laid out as aforesaid (which Oath the said Justices are hereby impowered and required to administer) to make and cause such Taxation and Assessment to be made, and to be levied and collected in such Manner, as is directed in and by the above-mentioned Statute made in the twenty-seventh Year of the Reign of Queen *Elizabeth*, as aforesaid, in order thereby to reimburse such High Constable or High Constables all such Charges as he or they shall have necessarily expended in defending such Action, wherein such Plaintiff or Plaintiffs shall have been nonsuited, or shall have discontinued his, her or their Action, or against whom Judgment shall have been given upon Demurrer, or a Verdict shall have been given, over and above the Costs in those Cases to be taxed as aforesaid; and in case it shall be made appear upon Oath to the said Justices of Peace (which Oath the said Justices are hereby also impowered and required to administer) to their Satisfaction, that such Plaintiff or Plaintiffs, and also his or their Sureties, is and are insolvent, so that the said High Constable or High Constables can have no Relief, as to such taxed Costs by them expended in such Defence as aforesaid (save only by the Power herein after given to the said Justices) it shall and may be lawful to and for such two Justices of the Peace to make and cause a Taxation and Assessment to be made, and to be levied and collected, in the same Manner as is directed in and by the aforesaid Statute made in the Reign of Queen *Elizabeth*, in order thereby to reimburse such High Constable or High Constables such taxed Costs, as, by reason of

No. 5.
8 George II.
c. 16.

such Insolvency, he or they shall not be able to recover and receive of and from the Plaintiff or Plaintiffs in the Action, or his or their Sureties, as aforesaid.

Money levied for reimbursing the High Constable to be paid within 10 Days.

VIII. And be it further enacted by the Authority aforesaid, That the several Sum or Sums of Money, which shall be rated, and assessed and levied, and collected, as aforesaid, for the Reimbursement of the Expences necessarily sustained by any High Constable or High Constables, in Defence of any Action brought against the Hundred, upon the Statutes above-mentioned, or either of them, in case of any Judgment given against the Plaintiff or Plaintiffs, shall be paid, within ten Days after such Collection, unto the said Justices, or one of them, to the Use and Behoof of such High Constable or High Constables, to whom the said Justices shall upon Request pay and deliver over the same.

10 l. Reward for apprehending a Felon, so as to indemnify the Hundred.

IX. And to the Intent that *Hue and Cry* may be made with more Diligence and Effect, and other Persons encouraged to take such Felon or Felons; Be it further enacted by the Authority aforesaid, That any Person or Persons who shall apprehend such Felon or Felons, within the Time herein before limited for that Purpose, whereby the Hundred hath been actually indemnified or discharged from any such Action, as aforesaid, shall upon due Proof thereof upon Oath made before such two Justices as aforesaid (which Oath the said Justices are hereby also impowered and required to administer) be intitled to the Reward of ten Pounds (which Sum shall be raised upon the Hundred by a Taxation and Assessment, to be made, and to be levied and collected in the same Manner as the other Sums of Money by this present Act appointed to be raised upon the Hundred are directed to be assessed, levied and collected) and such Sum of ten Pounds, which shall be so rated, assessed, levied, and collected, as aforesaid, shall be paid unto two such Justices of the Peace, within ten Days next after the same shall be so levied and collected, to the Use of the Person or Persons who shall be thereunto intitled, as a Reward for having so apprehended such Felon or Felons as aforesaid; and such Justices shall, upon reasonable Request made for that Purpose, pay over and deliver the said Sum to such Person or Persons accordingly, in such Shares and Proportions as the said Justices shall think reasonable: Provided always, That such Person or Persons, so intitled to such Reward, shall not be thereby rendered incapable to be a Witness in any such Action.

How the Assessments are to be made.

X. And be it also enacted by the Authority aforesaid, That the Justices of the Peace by whom such Taxation and Assessments, as aforesaid, shall, in pursuance of the said Statute made in the twenty-seventh Year of the Reign of Queen *Elizabeth*, and also of this present Act, be made, shall limit and appoint at their Discretion some certain reasonable Time within which such Taxations and Assessments shall be levied and collected, which Time shall not exceed thirty Days; and also that if any such Officer or Officers, who are to levy and

Penalty on Collectors not doing their Duty.

No. 5.
8 George II. c. 16.

collect out the same within such Time as shall be limited and appointed by the said Justices of the Peace for their doing thereof, or shall refuse or neglect to pay and deliver over the Sums of Money, so levied and collected, to the said Sheriff, and also to the said Justices, in such Manner as the same in the several Cases herein before-mentioned are respectively directed to be paid, within the respective Times herein before limited for such Payment thereof; every such Officer shall, for every such Refusal or Neglect, forfeit double the Sum appointed to be by him levied and collected as aforesaid.

'XI. And whereas by the above-mentioned Statutes it 'is enacted, That fresh Suit and *Hue and Cry* shall be made 'and pursued, and in what Manner the same shall be, yet no 'particular Person or Persons is thereby expressly required to 'make and cause such *Hue and Cry* and Pursuit to be made, 'whence it hath often happened, that the same hath been so 'much neglected and delayed, that Felons have had Time to 'make their Escape, and the Intention of the said Statutes 'hath been thereby in great Measure frustrated:' Be it further enacted by the Authority aforesaid, That every Constable, Borsholder, Headborough or Tythingman, to whom Notice shall be given, or at whose Dwelling-house Notice of any Robbery shall be left, as aforesaid, and that every Constable of the Hundred, and every Constable, Borsholder, Headborough, or Tythingman, of any Town, Parish, Village, Hamlet or Tything, within the Hundred or the Franchises within the Precinct thereof, wherein such Robbery shall happen, as soon as the same shall come to his Knowledge, either by Notice from the Party or Parties robbed, or from any other Person or Persons to whom Notice shall be given thereof pursuant to this present or any other Statute, shall with the utmost Expedition make and cause to be made fresh Suit and *Hue and Cry* after the Felon or Felons by whom such Robbery shall be committed; and if any Constable, Borsholder, Headborough or Tythingman, shall offend in the Premisses, by refusing or neglecting to make, or cause to be made, such fresh Suit and *Hue and Cry* as aforesaid, every such Offender shall for every such Refusal or Neglect forfeit five Pounds.

Method of pursuing Hue and Cry.

5l. Penalty on Refusal or Neglect.

XII. And be it enacted by the Authority aforesaid, That every Forfeiture hereby incurred shall be recovered with Full Costs of Suit, and shall be and enure, as to one Moiety thereof, to the Use of the King's most Excellent Majesty, and as to the other Moiety thereof, to the Use of such Person or Persons as shall sue for the same within six Months next after such Forfeiture shall be incurred, by Action of Debt, Bill, Plaint or Information in any of his Majesty's Courts of Record at *Westminster*, wherein no Essoin, Privilege, Protection or Wager of Law shall be allowed, nor any more than one Imparlance.

Penalties how to be levied

XIII. And be it further enacted by the Authority aforesaid, That if any Action, Suit or Information shall be commenced or prosecuted against any Person or Persons for any thing done in pursuance of this or either of the herein before

No. 5.
8 George II. c. 16.

recited Statutes, That in every such Case the Defendant or Defendants in such Action, Suit or Information, may plead the General Issue, and give this and the aforesaid Statutes, or either of them, and the special Matter in Evidence, at any Trial to be had thereupon; and if the Plaintiff or Prosecutor shall become nonsuit, or shall discontinue or forbear his or her Action or Prosecution, or if a Verdict shall pass against the Plaintiff or Prosecutor, or Judgment shall be given against him or her, upon Demurrer or otherwise, the Defendant or Defendants may and shall recover Full Costs, for which he or they shall have the like Remedy as Defendants have by Law in other Cases of Costs.

General Issue.

Full Costs.

Limitation of Actions.

XIV. Provided always, That no such Action, Suit or Information shall be brought or exhibited, but within the Space of six Months next after the Matter or Thing done, for which the same shall be commenced, or exhibited, as aforesaid.

'XV. And whereas by the Laws now in being, the Person or Persons robbed may be admitted, in any Action to be brought against the Hundred, as a Witness, to prove the Robbery, and the Money, Goods or Effects, whereof he, she or they was or were robbed, and yet no Person inhabiting within the said Hundred can be admitted as a Witness for or on Behalf of the said Hundred, by Reason of the Interest he or she may have in the Consequences of the said Action, which is commonly very inconsiderable;' Be it therefore enacted by the Authority aforesaid, That in any Action already brought or to be brought against any Hundred, on either of the aforesaid Statutes, any Person inhabiting within the said Hundred or any Franchise thereof, shall be admitted as a Witness for or on Behalf of the said Hundred, in the same Manner as if he or she were not an Inhabitant thereof, but resided in any other Hundred whatsoever.

Any Inhabitant may give Evidence for the Hundred.

No. 6.

22 George II. c. 24.—An Act for remedying Inconveniencies which may happen by Proceedings in Actions on the Statutes of *Hue and Cry*.

No. 6.
22 George II. c. 24.

FOR remedying Inconveniences which may happen by Proceedings in Actions on the Statutes of *Hue and Cry*, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of *June* one thousand seven hundred and forty-nine, no Person whatsoever shall recover against any Inhabitant or Inhabitants of any Hundred, in any Action on any of the Statutes of *Hue and Cry*, more than the Value of two hundred Pounds, unless the Person or Persons so robbed shall, at the Time of such Robbery, for which such Action

shall be brought, be together in Company, and be in Number two at the least, to attest the Truth of his or their being so robbed; any Law, Statute, or Provision to the contrary in any wise notwithstanding.

No. 6
22 George II. c. 24

No. 7.

22 George II. c. 46.—An Act to continue several Laws for preventing Exactions of the Occupiers of Locks and Wears upon the River *Thames* Westward, and for ascertaining the Rates of Water Carriage upon the said River; * * * * * * * * * * and for ascertaining the Method of levying Wages of Execution against the Inhabitants of Hundreds: * * * * * *

P.

XXXIV. AND be it further enacted by the Authority aforesaid, That no Writ of Execution hereafter to be sued out against the Inhabitants of any Hundred, on any Judgment obtained by virtue of any Act or Acts of Parliament whatsoever, shall be levied on any particular Inhabitant or Inhabitants of such Hundred, but the Sheriff or Sheriffs shall, on Receipt of every such Writ, cause the same to be produced to two Justices of the Peace, in such Manner as is directed by the Statute made in the eighth Year of his present Majesty's Reign, intituled, 'An Act for the Amendment of 'the Law relating to Actions on the Statute of *Hue and Cry*,' and that thereupon the said Justices shall, in the Manner directed by the said Act, cause a Taxation to be made, levied and collected, for raising and paying, as well the Costs and Damages recovered by the Plaintiff or Plaintiffs, as also all such just and necessary Expences as any Inhabitant or Inhabitants of such Hundred shall have been at in defending any such Action; the same being first proved on Oath, and the Attorney's Bill being first taxed in such Manner as the Act directs; and the Sums of Money so to be levied and collected shall, within the Time by the said Act limited, be paid to the Sheriff or Sheriffs, and by him or them paid or delivered over to the Persons intituled to receive the same, without any Deduction, Fee or Reward whatsoever.

No. 7.
22 George II. c. 46.
Regulations to be observed with regard to Writs of Execution sued out against any Hundred.

8 Geo. 2. c. 16.

No. 8.

38 George III. c. 5.—An Act for granting an Aid to His Majesty by a Land Tax, to be raised in *Great Britain*, for the Service of the Year One thousand seven hundred and ninety-eight. [30*th. November*, 1797.]

P.

CXXI. AND be it further enacted by the Authority aforesaid, That no Receiver-general of any of the Taxes by this Act granted, or any of his Agent or Agents, Servant or Servants, by him employed for the carrying any of

No. 8.
38 George III. c. 5.

No 8. 38 George III. c. 5.

No Receiver-general, or his Agents, may sue the Hundred for a Robbery, unless the Persons carrying the Money be three in Company

the Monies to be received for or on account of the said Taxes, shall maintain any Action or Actions against any Hundred or Hundreds in that Part of *Great Britain* called *England*, for or upon Account of his or their being robbed on the King's Highway of any of the said Monies, unless the Person or Persons carrying such Monies shall, at the Time of such Robbery, be together in Company, and be in Number Three at the least, to attest the Truth of his or their being so robbed; any Law, Statute or Provision, to the contrary thereof in anywise notwithstanding.

No. 9.

41 George III c. 24.—An Act for indemnifying of Persons injured by the forcible pulling down and demolishing of Mills, or of Works thereunto belonging, by Persons unlawfully and riotously assembled [18*th*. *April* 1801.]

No 9 41 George III. c. 24.

9 G 3. c. 29.

1 G. 1 st 2. c. 5.

1 Gul & Mar. st. 1 c. 18.

'WHEREAS by an Act passed in the ninth Year of the 'Reign of his present Majesty, intituled, "An Act 'for the more effectual Punishment of such Persons as shall 'demolish or pull down, burn, or otherwise destroy or spoil, 'any Mill or Mills; and for preventing the destroying or 'damaging of Engines for draining Collieries and Mines, or 'Bridges, Waggon Ways, or other Things used in conveying 'Coals, Lead, Tin, or other Minerals from Mines, or Fences 'for inclosing Lands in pursuance of Acts of Parliament," it 'was amongst other Things recited, That by an Act passed in 'the first Year of the Reign of his late Majesty King *George* 'the First, intituled, "An Act for preventing Tumults and 'riotous Assemblies, and for the more speedy and effectual 'punishing the Rioters," it was among other Things enacted, 'That if any Persons unlawfully, riotously, and tumultuously 'assembled together, to the Disturbance of the publick Peace, 'should unlawfully and with Force demolish or pull down, or 'begin to demolish or pull down, any Church or Chapel, or 'any Building for religious Worship, certified and registered 'according to the Statute made in the first Year of the Reign 'of the late King *William* and Queen *Mary*, intituled, "An 'Act for exempting their Majesties' Protestant Subjects, dis-'senting from the Church of *England*, from the Penalties of 'certain Laws," or any Dwelling-house, Barn, Stable, or 'other Outhouse, but then every such demolishing or pulling 'down, or beginning to demolish or pull down, should be ad-'judged Felony without Benefit of Clergy, and the Offenders 'therein should be adjudged Felons, and should suffer Death 'as in Cases of Felony without Benefit of Clergy: And it was 'also further recited, That some Doubts had arisen whether 'the said Act extended to the pulling down and demolishing 'of Mills: Wherefore, for remedying the Mischiefs which 'might ensue therefrom, and for the more effectual Punish-

'ment of such Offenders, it was by the said Act enacted, 'That if any Person or Persons unlawfully, riotously, and tumultuously assembled together to the Disturbance of the 'publick Peace, should at any Time after the first Day of '*July* one thousand seven hundred and sixty-nine, unlawfully 'and with Force demolish or pull down, or begin to demolish 'or pull down, any Wind Saw Mill or other Wind Mill, or 'any Water Mill or other Mill, which should have been or 'shall be erected, or any of the Works thereto respectively 'belonging, that then every such demolishing or pulling 'down, or beginning to demolish or pull down, should be 'adjudged Felony without Benefit of Clergy, and the Offenders therein should be adjudged Felons, and should suffer 'Death as in case of Felony without Benefit of Clergy: And 'whereas no Provision is made in and by the said recited Act 'for the Indemnification of the Persons damnified and in'jured by such pulling down and demolishing of the above'mentioned Mills and Works thereunto belonging: And 'whereas it is expedient that the like Remedy and Means of 'Indemnification should be extended to the Persons damnified 'and injured by the pulling down and demolishing such Mills 'and Works thereunto belonging, as are by the said Act, 'passed in the first Year of the Reign of his said late Majesty 'King *George* the First, intituled, "An Act for preventing 'Tumults and riotous Assemblies, and for the more speedy 'and effectual punishing the Rioters," now afforded and 'given to the Persons damnified and injured by the demolish'ing and pulling down wholly or in part any Church, Chapel, 'Building for religious Worship, Dwelling-house, Barn, 'Stable, or Outhouse, as in the said last-mentioned Act is 'mentioned;' Be it therefore enacted, by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if after the passing of this Act, any Wind Saw Mill or other Wind Mill, or any Water Mill or other Mill, or any of the Works thereunto belonging, shall be demolished or pulled down, wholly or in part by any Persons so unlawfully, riotously, and tumultuously assembled, that then the Damages sustained by the Person or Persons injured and damnified by such demolishing or pulling down wholly or in part, shall and may be sued for, recovered, levied, raised, and reimbursed in such Manner and Form and by such Ways and Means as are particularly provided in and by the said Act made in the first Year of the Reign of his said late Majesty King *George* the First, in respect to the several Descriptions of Buildings therein mentioned.

No. 9. 41 George III. c. 24.

Damages occasioned by the demolishing of Mills, &c. by Persons unlawfully assembled, may be sued for and recovered in the Manner provided respecting other Buildings, by 1 G. c. 5.

(1.) The Question, whether Machinery used in Mills is Part of the Works, is for the Decision of the Jury. No Time is limited for commencing the Action; Rushforth *v* Beatson, 1 Price, Exch. Rep. 343.

Part IV. Class XXIII.

KING'S DEBTS.

No. 1.

9 Henry III. (Magna Charta) c. 8.—How Sureties shall be charged to the King.

[Inserted ante P. III. Cl. 2.]

No. 2.

51 Henry III. st. 4.—What Distress shall be taken for the King's Debts, and how it shall be used.

[Inserted Pt. II. Cl. 12. No 1.]

No. 3.

Statutum De Scaccario, 51 Henry III. stat. 5.—When the King's Fermors, Sheriffs, and Bailiffs, shall make their Accompts and Payments. Who shall be Escheators in several Shires.

No. 3. 51 Henry III. st. 5

When the King's Bailiffs and Officers shall account.

'THE King commandeth, 'that all manner of Bailiffs, Sheriffs, and other Officers, as well the Justices 'of *Chester*, and other Bailiffs 'of these Counties, as other 'that be Receivers of Issues, 'of Wards, of Escheats, of 'their Bailiwicks, shall be answerable in the Exchequer, 'and there shall make account 'to the Treasurer and Barons '‡*of the same place.* And that 'all Sheriffs, Fermors, Bailiffs 'of Franchises, and other, who 'ought to come to the *Profer*

[‡ The Words in Italicks not in the Original.]

Cotton *MS. Claudius,* D. 2.

LE roi voet, qe toutes maneres des Baillifs, Viscountes, & autres Ministres le Roi, auxibien le Justice de Cestre, & les Baillifs des Isles, come autres de touz maneres de rescestes des issues, des gardes, des eschetes, de lour baillies, soient respoignantz al escheqer, & illoeqes rendent accompte al Tresorer, & as Barouns. Et qe touz les Viscountes, Fermers, Baillifs des fraunchises, & autres, qi devent venir al profre del Escheqer, lendemain de seint Michel, & lendemain

Cotton *MS.*

No. 3.
51 Henry III.
st. 5.

de la cluse de Pasqe, pur paier lour fermes, rentes, & issues, qappendent au Roi, viegnent as avauntditz terms, & portent illoeqes pleinement les avauntdites fermes, rentes, & issues, & les paient al' Escheqer. Et si nul faile de paier pleinement ceo qil doit paier, sicome avaunt est dit, son corps demoerge saunz departier jesques a taunt qil eit paie, ou gree fait Et celui qi ne vendra as avauntdites termes, soit amercie selonc les usages del Escheqer. Et a mesmes les termes les Viscountes & les Baillifs porterount les deniers, & paierount al Escheqer, ceo qils averount resceu a la somons del Escheqer, & des autres dettes le Roi, & de touz les choses avantdites, soient prestes & apparaillez defaire vewe dacompt.

'in the Exchequer, the *Monday* after the Feast of *St. Michael*, and the *Monday* 'after the *Utas* of *Easter*, to 'pay their Ferms, Rents, and 'Issues belonging to the King, 'and † *shall bring at the foresaid Terms, the foresaid Ferms,* '*Rents, and Issues due, wholly* '*into the Exchequer, as before* '*is mentioned.* And if they 'make default, their Bodies 'shall remain without departing from thence, until they 'have paid or made agreement; and he that will not 'come at the Terms aforesaid, 'shall be amerced after the 'Custom of the Exchequer; 'and the Sheriffs and Bailiffs 'at the same Terms shall bring 'and pay such Money as they 'have received of the Summons of the Exchequer, and 'other the King's Debts, and 'shall be prepared and ready 'to make full accompt of the 'things aforesaid.

[† For "shall bring at the aforesaid Terms, &c." *read* "shall come at the aforesaid Terms, and shall there bring in full the aforesaid Fermes, Rents and Issues, and pay them into the Exchequer."]

Et touz les Baillifs des fraunchises, qi deivent les dettes le Roi [*lever*] & responderont as Viscountes a lour maundement, selonc les estretes de la somons del Escheqer, viegnent & respoignent suffisantement. Et ceux qi ne frount, demoergent les corps de eux en la garde des Viscountes; & les Viscountes, pur lour defautes, envoierent lever les dettes per lour baillifs demegne, & per la ou ils purrount, sicome lem soleit faire en temps passe. Et si les Baillifs ne viegnent a respoundre a jour [*de ceo an & jour*] qe les Viscountes les ferront assavoir, les Viscontes entrent en les fraunchises, & facent lever les dettes per lour baillifs demeigne [*en mesme la manere.*]

'II. And that all Bailiffs of 'Franchises, which ought to 'levy the King's Debts, and 'be answerable to the Sheriffs 'thereof, shall come and accompt sufficiently, according 'to the Extreats of the Summons of the Exchequer; and 'such as do not, their Bodies 'shall remain in Ward of the 'Sheriffs; and for Default in 'them, the Sheriffs shall cause 'the Debts to be levied by their 'own Bailiffs, where they 'have Power, as they have 'used to do in Time passed. 'And if the Bailiffs do not 'come in at the Day that the 'Sheriff shall give them knowledge, the Sheriff shall enter 'into the same Franchises, 'and levy the Debts with his 'own hand.

Bailiffs of Franchises accompt.

No. 8.
51 Henry III. stat. 5

The Justices and Bailiffs of Chester's accompt.

'III. Concerning Justices of *Chester*, and Bailiffs thereof, the King willeth, that they, or one of them, shall come at the *Profer* of St. *Michael* every Year, when they ought to give account unto the King; and at the *Profer* of the *Utas* of *Easter* they shall come likewise, and bring in that which they owe to the King for that Term; and the Justices of *Chester* shall have Day to accompt from Year to Year in *quindena Paschæ*, and the Bailiffs thereof the Morrow of *Easter Utas*. And that all Sheriffs of *England*, except the Sheriffs of *Westmorcland*, *Lancaster*, *Worcester*, *Rutland*, and *Cornwall*, shall from henceforth keep all such Wards and Escheats, that are not in other Fees, as belong to the King, which be within their Shires; and of the Issues thereof they shall be answerable in the Exchequer at the Terms aforesaid;* *and at their Turns that they make in their Shires, they shall find Office of other Things, which the King's Escheators have not used to find of that which belongeth unto the King*, once or twice in the Year, to as little Grievance of the People as they can. And the Sheriffs shall seize the Escheats that fall, to remain unto the King in Fee, and shall certify the King of them without delay.

Sheriffs shall keep the King's Wards and Escheats

Escheq er in marg.

Cotton *MS.*

En droit de justice de Cestre & des Baillifs des Isles, voet le Roi, qils viegnent per ascun de lour al profer de seint Michel chescun an, a rendre quaunt qils deivent au Roi a cel terme. Et a la [*profre de la*] cluse de Pasqe, viegnent en mesme la manere, & portent ce qils deivent au Roi adonqes. Et le Justice de Cestre eit jour dacompt dan en an a la xv. de Pasqe, & les Baillifs des Isles lendemayn de la cluse de Pasqe. Et que touz les Viscountes Dengleterre, horspris le viscounte de Westmerl', Lanc. Wircestr', Roteland', & Cornewaill', desoremes gardent les gardes & les eschetes, qe ne sount en fee, qappendent au Roi dedeinx lour Countees; & des issues loialment respoignent al Escheqer as termes avauntdites; & as termes [*lour tournes*] qils frount per lour Countees, de lour offices, & des autres choses, qe les Eschetours soleient faire, & qappent al escheterie un foitz ou deux, au meindre meschief saunz grevance del poeple, qils purrount. Et les eschetes qe cherrount au roi a demurrier en fee, les Viscountes les seisent, & les facent savoir au Roi saunz delaie.

Three Surveyors.

(*b*) persourver.

'IV. And the King shall assign three able Persons that shall go throughout the Realm, to survey and find the Wards

Et le Roi attournera trois prodes hommes, qi irrount per tote la terre, pur (*b*) pursourver & estendre les gardes & les

* The Meaning of this Sentence seems to be as follows. — And at their Turns which they make in their Shires, they shall be answerable for their Office, and for other Things which the Escheators used to do, and which belong to the Escheat, once, &c. N B. What follows in the next Sentence but one clears up this Passage. — *Note to Runnington's Edition of the Statutes*

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eschetes avauntdites, de an en an, quaunt ils verrount qe bon soit. Et les Viscountes per counseil de eux proverount per mettre a ferme, & en autre manere, tiels gardes & eschetes en la manere qils verrount, qe mieux soit al pru le Roi.

Et en les cynk Countees avauntnomes, voet le Roi, qe le Viscounte de Cumberl' face loffice descheterie en les Countees de Westmerl, & Lanc, & celui de Not' en Rotel'; & celui de Lancaster [*de Gloucestre*] en Wircestre: & celui de Devonshire en Cornewaill, & souvement gardent les eschetes [*& les gardes*] au Roi, & de mesmes les Countees, & respoignent des issues al Escheqer, si come ils deivent faire de lour Countees. Et les trois prodes hommes avauntditz surverount & estenderount tiels gardes & eschetes, sicome aillours, & per le counseil deux soient appruez. Et quaunt les Viscountes acompterount de lour acomptz, si acompterount des gardes & des eschetes. Et per mesme la manere face le Justice de Cestre, & les Baillifs des Isles, chescun en sa baillie. Et les prodes hommes avauntdites garderount les demeignes le Roi, & les emprowerount selonc ceo qils verront qe mieux soit al oeps le Roi, & responderount al Escheqer des issues: Et mesmes ceux averount poer de bailler petitz maneres en meins a les gentz des mesmes, les villes [*lieux*] ou as autre, selonc lour discrecion, a fermes certeins de an en an, per la ou ils verrount qe soit apru le Roi. Et yceux fermes respounderount des issues a ceux avauntditz principals approvers, &

'and Escheats aforesaid, from 'Year to Year, when they shall 'think requisite. And the Sheriffs by their Counsel shall approve, and let to Ferm, or 'otherwise, such Wards and 'Escheats, as they shall think 'most for the King's Advantage.'

'V. Touching the five 'Shires before-named, the 'King will, that the Sheriff 'of *Cumberland* shall execute 'the Office of Escheator in the 'Shires of *Westmoreland*, and '*Lancaster*; and the Sheriff of '*Nottingham* in *Rutland*; and 'the Sheriff of *Gloucester*, in '*Worcester*; and the Sheriff of '*Devonshire*, in *Cornwall*; and 'shall safely keep the King his 'Wards and Escheats in the 'same Shires, and shall be answerable in the Exchequer 'for the Issues of them, as well 'as for their own Shires. And 'the three able Persons aforesaid shall survey and extend 'such Wards and Escheats, as 'well there as in other Places, 'and those shall be approved 'by their Counsel. And when 'the Sheriffs do accompt for 'their Counties, they shall accompt for such Wards and 'Escheats. And in like manner shall the Justices of *Chester* do, and their Bailiffs also, 'every one for his Bailiwick. 'And the said three able Persons shall keep the King's 'Demeans, and shall approve 'them as they shall think best 'for the King's Advantage, 'and shall be answerable in 'the Exchequer for the Issues 'And they shall have Power 'to let forth small Manors and 'Demeans to Folk of the same 'Places, or to other, according to their Discretion, and

No. 3. 51 Henry III, stat. 5.

Wards and Escheats let to Ferm.

Sheriffs Escheators in other Shires.

No. 3.
51 Henry III. stat. 5.

'shall let them to Ferm from 'Year to Year, as they shall 'think most to the King's 'Profit: And the Fermers 'shall be chargeable for their 'Ferms unto the principal 'Approvers, and they unto 'the Exchequer, the Morrow 'next after the Ascension, 'from Year to Year.

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[*soient*] eux al Escheqer lendemain del Ascension, de an en an.

Collectors of the Custom of Woolls.

'VI. And the principal Collectors of the Custom of 'Woolls, at the two Terms before mentioned, shall pay all 'such Money as they have received of the said Custom, 'and shall make accompt from 'Year to Year clearly of all 'Parcels received in any of 'the Ports, or other Places of 'the Realm, so that they shall 'answer for every Ship where 'it was charged, and how 'much Wooll it carried, and 'for every other Charge in 'the Ship, whereof Custom is 'due, and for the whole Receipt.

Et qe les [*principales*] Coillours de la custume des leins paient, a les deux termes avantditz, touz les deniers, qils averont pris [*coillez*] & resceu de lavauntdit custume, & dan en an rendent acompt apertement & distinctement de touz les parcels resceux per toutes les portes, & per toute la terre, issint qil respoigne de chescun neef, ou ele serra charge, & come bien ele portera de la leine, & dautre aver charge en la nief, de custume qest due, & de toute la resceite.

The Accompt of the Keeper of the King's Wardrobe.
The King's Debt shall first be heard.

'VII. And the Warden of 'the King's Wardrobe shall 'make accompt yearly in the 'Exchequer in the Feast of St. '*Margaret*; and the Treasurer 'and Barons of the Exchequer 'shall be charged by Oath, 'that they shall not attend to 'hear the Pleas or Matters of 'other Men, while they have 'to do with the King's Business, if it be not a Matter 'that concerneth the King's 'own Debt. And when a Sheriff or Bailiff hath begun his 'Accompt, none other shall 'be received to accompt, until he that was first appointed 'hath clearly accompted, and 'his Money received. And 'that the Constable, Marshal, 'Chamberlain, and other that 'are of Fee in the Exchequer,

Et le gardein de la Garderobe le Roi rende acompt de an en an al Escheqer a le seint Margarete; Et le Tresorer & les Barouns de Lescheqer soient chargez per serement, qils nentendrount doier les plees des quereles de nullui, taunt come ils eient affaire des busoignes le Roi, si ce nest querele qe touche la dette le Roi mesmes. Et quaunt Viscount ou Baillif eit comence de acompter, nul autre ne seit resceu de aconter tanque le primer qe soit assis eit per accompte, & qe la somme soit resceu. Et qe le Conestable, & le Mareschal, & les Chamberleyns, & les autres, qi sont de fee al Escheqer, desoremes presentent au Roi mesmes ceux qils mette-

Cotton *MS.*

rount en lour lieux affaire lour office de lieux: & celes gents soient de bone fame, & qils soient suffiseantz, & tieux pur qi fates ils voillent respoundre

Et le Roi enjoint al Tresorer & as Barouns, en la foi qils lui deivent, & le serment qils fount, qils ne mettent autres deputez depar eux qe ceux qi sount resceux Et qe Lescheqer ne soit charge de pluiz de gentz qe mie tre est Et qe nul de laviz jure le Roi mette homme pur lui, ne clerc, ne lay, qil ne soit jure de laviz, & ceo sauuz especiale conge le Tresorer. Et si null le face, soit maintenaunt remue de son office, & null' autre ne soit receu en son lieu saunz le Roi. Et si celui qi serra mys, & celui qi lavera mys, soit punys, selonc le trespas. Et si ambe deux ne sufficent, soient puniz ovesque le seignour [soveraigne,] quel qil soit de fee, ou de autre en son lieu, tanqe le Roi eit autre chose ordene Et si celui qi avera tenu le lieu dautre per conge le Tresorer, face chose qil ne devve [doit faire,] soit puny selonc le trespas, sil ad de quoi, & sil nad de quoi, celui qi lavera mys respoigne de son trespas Et si celui ne suffice, respoigne celui qi le avera mys en loffice, le quel qil soit, de fee ou dautre.

No 3
51 Henry III. stat 5

'from henceforth shall present unto the King such as they 'have put in their Places to do 'their Offices, which must be 'of good Fame, and sufficient, 'for whose Acts themselves 'will answer.

Deputy Officers in the Exchequer.

'VIII. And the King commandeth the Treasurer, and 'Barons of the Exchequer, 'upon their Allegiance, and 'by the Oath that they have 'made to him, that they shall 'not assign any in their rooms, 'but such as this Act meaneth 'of, and that the Exchequer 'be not charged with more 'Persons than is necessary. 'And that none of them, that 'be sworn to the King, shall 'put in his room any other 'Clerk or Lay Person, except 'he be sworn, without special 'Licence of the Treasurer; 'and if any be, he shall be 'forthwith removed from his 'Office, and none other shall 'be received in his stead without the King's Licence And 'if any that is received without the Treasurer's Licence 'do trespass after, Punishment 'shall be done as well to the 'Assignor as to him that is assigned, according to the Trespass. And if both be unsufficient, their Superior shall 'be punished, whether he be 'Officer of Fee, or other. 'And the Treasurer shall put 'no other in his room, until 'he hath Commandment from 'the King. And if he that 'keepeth the room of another, 'by Licence of the Treasurer, 'doth any thing that he ought 'not to do, he shall be punished according to the Trespass, 'if he have whereof; and if he 'have not, he that put him in 'Office shall be charged for his

Cotton *MS.*

No. 3.
51 Henry III.
stat. 5.

'Trespass; and if he that put him in Office be not sufficient, his Superior shall be charged, whether he be of Fee or otherwise.

'IX. And they * of the Wooll-staple shall make Oath, that if any of them may perceive that another doth commit any Default, Offence, or other thing † *dishonest in the Office of the Wooll-staple, or that he hath done before*, that they shall certify it to the Treasurer, or to the Barons, or to some of them, who shall cause it to be amended, or to the King himself, if need require. And that about the Feast of St. *Margaret*, before that the Exchequer be closed, they shall cause a Search to be made, whether any Sheriff or Bailiff, that ought to have accompted the same Year, have not, and thereupon a Remembrance in a Roll shall be made by itself. And if it be a Sheriff, his Accompt shall be first heard after *Michaelmas*, before that any other be received to accompt: And if he be a Bailiff, he shall be summoned or distrained to come at a certain Day for to accompt, so that no Accompt shall be suffered to sleep. And forasmuch as Sheriffs, Constables, and other, obtain many times outrageous Allowances, by Pretence of the King's Works, and other Things done and provided by his Commandment; it is provided, that all Surveyors of the King's Works shall be chosen by the Oath ‡ of Twelve Men, and of such as are best skilled, and will and may attend best to that Office;

* Of the Wool-staple is inserted by Mistake.

† Not in the Original.

The King's Officers that ought to accompt.

Surveyors of the King's Works.

‡ Of good Men.

Et touz ceux *de lanız* facent le serement, qe si null puis perceiver qe autre face desleaute, ou malveiste, ou autre chose, face assavoir au Tresorer & as Barouns, ou ascun de ceux, qi le face amendre, & si miestre soit, facent savoir au Roi. Et qe entour la feste de seinte Margarete, avaunt qe Lescheqer soit clos, face chescun an bien serchier & veer, si Viscounte, ou autre Baillif, qi deust avoir acompt cel an, neit acompte, son acompt soit primerement oy apres le seint Michel, avaunt ceo qe nul autre Viscounte soit resceu dacompte. Et si ceo soit autre Baillif, soit maunde, ou destreint, qil viegne a certein jour dacompter, issint qe nul acompt soit suffiert dendormer. Et purceo qe les Conestables, Viscountes, & autres [*baillifs*] ount meintefoitz eu outrageous allowances per faux testmoignance des overeignes le Roi, & des autres choses purveus per ses comaundementz, perveu est, qe touz les veours des overeignes le Roi soient esluz per serement des prodes hommes, & tieux qi mieux sachent, voillent & puissent a cel office entendre, & qe seient suffizans de respoundre au Roi, si miestre soit, & soient jurez qe ills porterount loial tesmoignaunce. Et si le Roi, ou les Barouns [*de lescheqer*] eient null' en suspecion de faux allowance faite des overeignes, ou dautre chose, si soit la verite en requise; & celui qi serra atteint de ceo re-

Cotton *MS.*

spoigne au Roi de taunt come cele allowaunce amounte, & eit la prisone, & soit puny a la volunte le Roi, & les veours soient reintz [*puniz*] pur le consente. Et per mesme la manere celui qi avera concele sui acompt lez choses dount il se deust charger, soit puny come celui qi avere [*fait*] faux allowance.

'and that they be sufficient to 'answer the King, if need be, 'and shall swear that they 'bear lawful witness. And if 'the King or Barons of the Exchequer have any Suspicion 'of false Allowances of Charges, 'or other Things, the Truth 'must be inquired; and he that 'is attainted shall answer to 'the King for as much as the 'Allowance amounteth unto, 'and shall be imprisoned † *one* '*Year and forty Days*, and 'shall be punished at the King's 'Pleasure, and the Surveyors 'shall be punished for their 'Consent. And likewise he 'that upon the Accompt did 'conceal and keep secret such 'Things, whereof he ought to 'have charged himself, shall 'be punished in like wise as 'he that admitted such false 'Allowances.

No. 5. 51 Henry III. stat. 5.

† Not in the Original

Et qe les Justices, enquerours, & autres, desoremes liverent al Escheqer, a la seient Michel, de an en an, lour estretes des fins, & des amerciementz faites & taxez devaunt eux, de touz les choses dount estretes soleient estre liverez illoeqes. Et ceux de Lecheqer facent lestrete de la somons per touz les Countees, sauve ceo qe lestrete en eire de Justices de touz plees soient maintenaunt liveres apres leire fait.

'X. And that all the Justices, Commissioners, and 'other, shall from henceforth 'deliver into the Exchequer, 'at the Feast of St. *Michael*, 'from Year to Year, the Extreats of Fines and Amerciaments made and taxed before 'them, and of all Things 'wherefore the Extreats are 'wont to be delivered there. 'And they of the Exchequer 'shall make Extreats of the 'Summons through all Shires, 'saving that the Extreats in the 'Eyre of all Pleas shall be delivered immediately after the 'Eyre made.'

Extreats of Fines and Amerciaments shall be delivered in the Exchequer.

No. 6.

3 Edward I. (Westminster) c. 19.—A Sheriff having received the King's Debt, shall discharge the Debtor.

EN droit des Viscountes ou autres, qi respoignent per lour meyns al Escheqer, & qe

'IN Right of the Sheriffs, or 'other, which answer by 'their own Hands unto the

No. 6. 3 Edward I. c. 19.

No 6.
3 Edward I. c. 19.

A Sheriff having received the King's Debt, shall discharge the Debtor.

'Exchequer, and which have received the King's Father's Debts, or the King's own Debts before this Time, and have not acquitted the Debtors in the Exchequer, it is provided, That the King shall send good and lawful Men through every Shire, to hear all such as will complain thereof, and to determine the Matters there, that all such as can prove that they have paid, shall be thereof acquitted for ever (whether the Sheriffs or other be living or dead) in a certain Form that shall be delivered them, and such as have not so done (if they be living) shall be grievously punished; and if they be dead, their Heirs shall answer, and be charged with the Debt. And the King hath commanded, that Sheriffs and other aforesaid, shall from henceforth lawfully acquit the Debtors at the next Accompt after they have received such Debts; and then the Debt shall be allowed in the Exchequer, so that it shall no more come in the Summons; and if the Sheriff otherwise do, and thereof be attainted, he shall pay to the Plaintiff thrice as much as he hath received, and shall make Fine at the King's Pleasure And let every Sheriff take heed, that he have such a Receiver, for whom he will answer, for the King will be recompensed of all, of the Sheriffs and their Heirs. And if any other, that is answerable to the Exchequer by his own Hands so do, he shall render thrice so much to the Plaintiff, and make Fine in like Manner. And that the

Cotton *MS.*

ount resceu de les dettes le Roi *Henry*, pier le Roi qore est, ou les dettes le Roi mesmes avant ces heurs, & qi nount mye les dettes aqituz all Escheqer; purveu est, qe le Roi envoiera bones gentz per touz les Countees, a oier touz ceux qe de ceo pleindre se voudrount, & a terminer issint la busoigne qe ceux qe purront monstrer qils eient issint paiez, a touz jours on serront quitez, les queux qe les Viscountes, ou les autres seront mortz ou vifs, en certeine forme que lour serra baille; & ceux qe issint naveront fait, sils soient en vie, serront puniz grevement, & sils soient mortz, lour heirs respoignent, & soient chargez de la dette. Et comaunde ad le Roi, qe le Viscountes & les autres avantditz, desoremes loialment acquitent les dettours al proschein accounte puis qils averont al dette resceu, & adonqes soit la dette allowe al Escheqer, issint qe mes ne viegne en somon, & si Viscount autrement le face, & de ceo soit atteint, si rendra al pleintif le treble de ceo qil avera de lui resceu, & soit reint a la volunte le Roi. & bien se garde chescun, qil eit tiel resceivour, pur qi il voudra respoundre, qar le Roi se prendra de tout as Viscountes, & a lour heirs; & si autre qe respounde per sa mein al Escheqer le face, si rende le double [*treble*] al pleintif, & soit reint en mesme la manere. Et qe les Viscountes facent tailles a touz ceux, qi les paieront le dette le Roi; & qe la somons de la Escheqer as touz les dettours, qui demaundre voudront la veue, lour facent monstrer saunz veir la a nulluy, & ceo

Cotton *MS.*
sanz rien doner, & qi ne le fra, le Roi se prendra a lui grevousement.

'Sheriffs shall make Tallies to 'all such as have paid their 'Debt to the King; and that 'the Summons of the Exche-'quer be shewed to all Debtors 'that demand a Sight thereof, 'without denying to any, and 'that without taking any Re-'ward, and without giving any 'Thing; and he that doth con-'trary, the King shall punish 'him grievously.'

No. 6. 3 Edward I. c. 19.

Process for levying of the King's Debt shall be shewed to the Debtor.

No. 7.

10 Edward I. (the Statute of Rutland.) — Touching the Recovery of the King's Debts.

Cotton *MS.* *Vespasian*, B. 7.

REX Thes' et Baron' suis de Scaccario ut in dempnitati nostre et populi nostri in aliquibus que nos et populum predictum in Scaccario predicto contingunt prospiciatur volumus et providemus quod non scribantur de cetero corpora Comitatuum in rotulis singulis set scribantur in quodam Rotulo annuali per se et legantur singulis annis super compotum Vic' singula viz. in singulis Comitatibus ut sciatur si quid nobis possit accidere ex quacunque causa Remanentia vero eorundem Comitatuum per posteras datas scribantur in rotulis annualibus et onerentur inde Vic' in quibus quidem remanentibus allocentur liberationes ac eleemosine constitute et alie allocationes si quas Vic' habuerit de exitibus ballive sue super brevia nostra. Et quia ad suggestionem diversorum ballivorum fiunt brevia nostra de diversis allocationibus in grave dampnum nostrum; volumus et providemus de hujusmodi allocationibus sic faciendis de cetero fiat visus

"THE King to his Treasurer and Barons of the "Exchequer, Greeting." 'To 'the Intent that Provision may 'be had for the Indempnity of 'us and our People, in certain 'Things touching us and our 'People aforesaid, in our said 'Court of Exchequer, we 'will and provide, That from 'henceforth the Bodies of 'Shires shall not be written in 'several Rolls, but shall be 'written in a certain annual 'Roll by themselves, and shall 'be ready every Year upon 'the Accompts of Sheriffs, 'that is to wit, in several Coun-'ties, that it may be known 'if ought may accrue unto us 'by any Mean. The Rema-'nents of the Ferms of the 'same Shires † *shall be written* 'post terras datas *in the an-'nual Rolls*, and the Sheriffs 'shall be charged therewith; 'in which Remnants the Live-'ries and Alms assigned shall be 'allowed, and other Allowances '(if Sheriffs have had any) of 'the Issues of their Bailiwicks 'by our Writs. And because

No. 7. 10 Edward I.

The Bodies of Shires.

Annual Rolls.

[† Qu. shall be written in annual Rolls of subsequent Dates.]

No. 7.
10 Edward I.

'of the Suggestion of our Bailiffs, our Writs are made of divers Allowances, unto our grievous Damage, we will and provide, That of such Manner Allowances so to be made, from henceforth View shall be made in our Exchequer; and the same View being faithfully made, the same Treasurer and Barons shall certify our Chancellor of the due Allowances so to be made, and that Writs of Allowances shall be made according to the same Certificate. Moreover, there shall be written in the same annual Rolls the Ferm of the Sheriffs, the Profits of Counties, the Ferms of Serjeanties and Asserts, the Ferms of Cities, Boroughs, Towns, and other Ferms, whereof there is Answer made yearly in the Exchequer. And in them also shall be written all Debts determined, all gross Debts, whereof there is hope that somewhat shall be paid, and all other Debts that seem to be clear; but when it is come unto accompt to the Title of New Duties, nothing shall be written in the annual Roll, but those Debts whereof there is hope of Payment, and whereof the Sheriff is answerable, and Debts found in the Originals, which seem to be clear.

Cotton *MS. Vespasian*, B. 7. in Scaccario nostro et hujusmodi visu fideliter facto iidem Thes' et Baron' certificent Cancellario nostro de dictis allocationibus sic factis et fiant brevia de allocationibus juxta certificationem predictam — Scribantur etiam in eisdem rotulis annualibus firme Vic' proficua Comitatuum firme serjantiarum et assertorum firme Civitatum Burgorum et Villarum et alie firme de quibus responsum est annuatim ad scaccarium predictum; et scribantur in eisdem omnia debita atterminata, et omnia grossa debita, de quibus spes est quod aliquid inde reddi possit Item omnia debita que videntur esse clara. Cum vero perventum fuerit in compoto ad titulum de Novis oblationibus, nichil scribatur in rotulo annuali, nisi ea de quibus est spes, et de quibus Vic' respondebit, et ea in originalibus que videntur esse clara.

[illegible] Desperate Debts.

'II. Of dead Ferms, and Debts desperate, whereof there is no hope, one Roll shall be made, and shall be inrolled, and read every Year upon the Accompt of Sheriffs; and the Debts whereof the Sheriffs are answerable shall be written in the annual Roll, and there shall be acquitted.

De firmis vero mortuis, et debitis de quibus non est spes, fiat unus rotulus; et irrotulentur et legantur singulis annis super compotum Vic' et debita de quibus Vic' respondebit scribantur in rotulo annuali, et ibi acquietentur.

No. 7. 10 Edward I.

Tallies for Debts.

Cotton *MS. Vespasian*, B. 7.

Item volumus et providemus quod proclametur in singulis Comitatibus quod omnes illi qui habent tallias de Scaccario de debitis suis, vel antecessorum suorum, ibidem hactenus solutis, et nondum allocatis, que adhuc veniunt in summonitione Scaccarii, liberentur hujusmodi tallie Vic' suis allocande ad Scaccarium super compotis suis, et Vic' predicti faciant illis a quibus tallias sic receperint scripta sua testificantia receptionem talliarum illarum summam et occasionem debitorum.

'III. Moreover, we will and provide, That it shall be proclaimed in every County, that all they that have Tallies of the Exchequer, for the Debts of themselves or their Ancestors, hitherto paid usually there, and not yet allowed, which yet do come in the Summons of the Exchequer, they do deliver to the Sheriffs such Tallies, to be allowed at the Exchequer upon their Accompts. And the Sheriffs shall make to them (of whom they shall so receive Tallies) their Writings, witnessing the Receipt of those Tallies, and Occasion of the Debts.

Two Knights.

Intersint etiam receptioni talliarum illarum duo fideles Milites ad hoc deputandi, inter eos et prefatum Vic' fiant cirograffa de hujusmodi receptionibus, sigillis eorum alternatim munita.

'IV. Two faithful Knights, deputed thereunto, shall be present at the Receipt of the Tallies aforesaid, between whom and the said Sheriffs Indentures shall be made of such Receipts, with the Seals of them both interchangeably.

Prefati vero Milites ad hoc deputati mittant ad Scaccarium ad terminum statutum partes suas cirograffforum predictorum in forma predicta, ut per visum et testimonium eorundem dicte tallie per Vic' sic recepte exibeantur et super compotis suis allocentur.

'V. The foresaid Knights, deputed thereunto, shall send the Parts of their Indentures, at the Term appointed, unto the Exchequer in Form aforesaid, to the End, that by the View and Witness of them, the said Tallies so received by the Sheriffs, may be shewed and allowed upon their Accompts.

Having Tallies, and not delivering them.

Proclametur etiam, quod nisi illi qui habent hujusmodi tallias exhibeant Vic' et Militibus ut predictum est exequendas, distringantur pro toto debito, et quod tallie predicte pro non solutis reputabuntur.

'VI. Moreover, it shall be proclaimed, That except those that have such Tallies to deliver them to the Sheriffs and Knights, as afore is said, that then they shall be distrained for the whole Debt, and that the foresaid Tallies shall be reputed for unpaid.

Item ut debita que adhuc veniunt ad summonitionem

'VII. Moreover, the Debts which yet are to come in the

Cotton MS. Vespasian, B. 7.

No. 7. 10 Edward I.

'Summons of the Exchequer whereof the Debtors do proffer Tallies against divers Sheriffs, shall be defalked and acquitted.

Scaccarii unde debitores proferunt tallias contra diversos Vic' depurentur et acquietentur.

Commissions to inquire of the King's Debts.

'VIII. Moreover we provide, That certain Persons assigned thereunto on our Behalf, shall be sent into every Shire, which shall have full Power to enquire of such Manner of Debts, and also to call afore them solemnly, as well the Sheriffs, as their Heirs and Assigns, and the Tenants of their Lands, in case they be dead that have received the Debts; and also, if Need be, to proceed to the taking of such manner of Inquests, whether the Parties (against whom the foresaid Tallies were shewed) do come or not, so that the Sheriff do return a reasonable Summons made to them therefore, and so the Truth being inquired and discussed in Presence of the Parties (if they will be there) the Inquisitors shall make Rolls of them that shall be convict afore them; so that the foresaid Debts being confessed and inrolled, the Tallies of the same shall be forthwith broken. And the Sheriffs shall have in their Custody the Transcripts of the same Rolls, under the Seals of the Inquisitors; and shall surcease in making Distresses for the Debts contained in the same, until they shall have otherwise in Commandment from us therefore. And the foresaid Inquisitors shall send unto the Exchequer the foresaid Rolls under their Seals, that it may be examined there, by a Search to be made

Providemus etiam, quod aliqui ad hoc assignandi ex parte nostra mittantur in singulis Com' qui habeant potestatem plenam inquirendi de hujusmodi debitis, et etiam vocandi coram eis solempniter tam Vic' quam heredes et assignatos et tenentes terrarum eorum, si ipsi mortui fuerint, qui hujusmodi debita receperint, et etiam procedendi ad hujusmodi inquis. capiend si necesse fuerit cum partes contra quas predicte tallie ostense fuerint venerint, cum non, testificata prius per Vic' summonitione eis rationabiliter inde facta et inquisita et discussa in presentia partium si interesse voluerint veritate, faciant inquisitores rotulos de omnibus coram eis convictis et concessis; et irrotulatis predictis debitis, statim frangantur tallie eorundem. Et Vic' habeant penes se sub sigillis inquisitorum transcripta rotulorum predictorum et super sedeant districtionibus faciendis pro debitis in eisdem contentis donec aliud a nobis inde habuerint in mandatis. Prefati vero inquisitores mittant ad Scaccarium sub sigillis suis rotulos suos predictos, ut ibi scrutin. inde faciend. examinentur que debita sunt in toto et que in parte soluta, et que non, et acquietentur debitores secundum quod per curiam fuerit faciend.

Cotton *MS.* *Vespasian*, B. 7.

No. 7.
10 Edward I.

'therefore, what Debts be 'paid in the Whole, and what 'are paid in Part, and what 'Debts there be, whereof the 'Debtors be not acquitted, ac'cording as shall be conve'nient to be done.

Tallies of Dividends.

Item volumus et providemus quod camerarii non faciant de cetero vic' seu eorum quibuscumque ballivis, tallias dividendi, nisi receptis ab eis prius particulis, summas et occasiones debitorum et nomina ea solventium continentibus, in quas quidem particulas voluerint hujusmodi dividenda partiri, quibus sub sigillis eorum receptis, non licet eas in alias particulas minuere.

'IX. Moreover, we will 'and provide, That the Cham'berlains from henceforth shall 'not make to the Sheriffs, or 'any of their Bailiffs, Tallies 'of *dividendis*, unless they first 'receive of them Writings 'containing the particular Sums 'and Occasions of Debts, and 'the Names of them that paid 'them, † *unto the which Parti'culars he may part the Names 'of such* [illegible] *Dividends*; 'which being so received un'der their Seals, it shall not 'be lawful to number them 'into other Particulars.

[† Qu. And into what Parcels they would have such Dividends distributed.]

The Sheriff returneth that the Debtor is not found, or hath nothing.

Providemus etiam, quod omnia debita ad que Vic' mandent quod debitores nihil habent in ballivis suis nec habuerunt tempore quo onerati fuerint de eisdem debitis, vel quod non sint inventi, extrahantur in rotulis, et tradantur rotuli illi viris fidelibus et circumspectis, qui inde facient inquis. in forma per Thes. et Baron providenda.

'X. Moreover, we provide, 'That all Debts, whereunto 'the Sheriffs make Return, that 'the Debtors have nothing in 'their Bailiwicks, ne had not 'at such Time as they were 'charged with the same Debts, 'or that the Debtors be not 'found, that the same Debts 'shall be estreated in Rolls, 'and the same Rolls to be de'livered unto faithful and cir'cumspect Men, which shall 'make Inquiry thereof after 'such Form as shall be provi'ded by the Treasurer and 'Barons.

No Suit shall be prosecuted in the Exchequer, unless it concern the King, or his Officers there.

Set quia quedam placita in Scaccario nostro hactenus tenta, que Nos seu Ministros ejusdem Scaccarii nostra non contingunt, per quod nostri placita et populi nostri negotia coram nobis indebite prorogantur et impediuntur; volumus et ordinamus, quod nullum placitum teneatur seu placitetur in Scac-

'XI. But for so much as 'certain Pleas were heretofore 'holden in the Exchequer, 'which did not concern us nor 'our Ministers of the Exche'quer, whereby as well our 'Pleas, as the Causes of our 'People, are unduly prorogued 'and letted; we will and or'dain, That no Plea shall be

No. 7.
10 Edward I.

'holden or pleaded in the Exchequer aforesaid, unless it do specially concern us and our Ministers aforesaid. And therefore we command, That ye cause the Premisses to be distinctly and openly read afore you, and to inroll it, causing the same to be straitly observed in our Court of Exchequer aforesaid. In Witness of which, &c., Yeven at *Rutland* the four and twentieth Day of the Month of *May*, in the tenth Year of our Reign'

Cotton *MS. Vespasian*, B. 7.

cario predicto, nisi specialiter contingit Nos vel Ministros nostros predictos. Et ideo vobis mandamus, quod permissa coram vobis distincte et aperte legi et irrotulari faciatis, et de cetero observari in predicto Scaccario nostro In cujus&c. T R apud Rotel. xxiiii. die Maii anno X° .

No 8.

28 Edward I. stat 3, c. 12 —What Distress shall be taken for the King's Debt, and how it shall be used.

No 8.
28 Edward I c. 12.

'FROM henceforth the King will, that such Distresses as are to be taken for his Debts shall not be made upon Beasts of the Plough, so long as a Man may find any other, upon the same Pain that is elsewhere ordained by Statute, &c. And he will not that over-great Distresses shall be taken for his Debts, nor driven too far; and if the Debtor can find able and convenient Surety until a Day before the Day limited to the Sheriff, within which a Man may purchase Remedy or agree for the Demand, the Distress shall be released in the mean Time; and he that otherwise doth, shall be grievously punished.'

Ex Rot in Turr Lond.

DESORMES voet le Roi qe destresces qe sont a fere pur sa dette ne soient fetz par bestes des carues, tant come home puet autre trover solunc ceo qe ordene est aillours par estatut ove la peine &c. E ne voet qe trop grive destresce soit prise pur sa dette ne trop loinz mene e si le dettour pusse trover suffissaunte e covenable seurte jesques a un jour deinz le jour le viscont dedenz le quel home en pusse purchaser remedie ou fere gre de la demande soit la destresce relesse endementers, E qui autrement fra soit grevement puny.

No. 9.

1 Richard II. c. 5.—The Punishment of a Clerk of the Exchequer making Process for a Debt paid.

ITEM ordeigne est qe toutz estatutz et ordeignances faitz avant ses hoeures des officers del Escheqer soient tenuz et fermement gardez en toutz poyntz. Et outre ce ordeigne est et establiz qe a quel heure qascuns dettes soient un foitz paiez et les tailles ent faitz rejoinz et allowez en dite Escheqer qe cel dette ny courge jamais en demande. Et sil aveigne ensi qapres tiel allowance fait illoeqes ascun clerc du dit Escheqer face brief ou proces pur lever mesme le dette de novel et ce duement provez qe mesme le clerc perde son office et eit la prison tanqe il avera fait gree a la partie par tant en damage si ascuns voira suyr par la discretion des Tresorer et Barons du dit Escheqer.

'ITEM, it is ordained, That all Statutes and Ordinances made before this Time of Officers of the Exchequer, be holden and firmly kept in all Points. And moreover it is ordained and established, That at what Time any Debts be once paid, and the Tallies thereof made, rejoined, and allowed in the said Exchequer, that this Debt shall never come in Demand. And if it so happen, that after such Allowance made there, any Clerk of the Exchequer make any Writ or Process to levy the same Debt of new, and that duly proved, the same Clerk shall lose his Office, and have Imprisonment till he hath made Gree to the Party by so much as he is endamaged, if any will sue, by the Discretion of the Treasurer and the Barons of the Exchequer.'

No. 7. 1 Richard II. c. 5.

No. 10.

33 Henry VIII. c. 39.—The Erection of the Court of Surveyors of the King's Lands, the Names of the Officers there, and their Authority.

THE Court of the General Surveyors of the King's Lands shall be a Court of Record, and shall have a Privy Seal, of which Court shall be Officers, the King's General Surveyors, a Treasurer, *viz.*, the Treasurer of the King's Chamber for the Time being, an Attorney, the Master of the Woods, Auditors, Receivers, a Clerk of the Court, an Usher, a Messenger; their several Oaths, Duties and Authorities. All Lands only mentioned in a Schedule, signed or to be signed with the King's Sign manual, shall be in Order and Governance of the said Court.

No. 10 33 Henry VIII. c. 39.

Altered 1 M. sess. 2, c. 10.

'L. AND where divers and sundry Obligations and Specialties heretofore have been made to divers Persons, Part of them to the Use of King *Henry* the Seventh,

No. 10.
33 Henry VIII. c. 39.

'Father of our now most gracious Sovereign Lord, and Part of 'them to the Use and Behoof of our said now Sovereign 'Lord;' Be it enacted by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That all Obligations and Specialties, which after the first Day of *May* next coming, shall be made for any Cause or Causes touching or in any wise concerning the King's most Royal Majesty, or his Heirs, or to his or their Use, Commodity or Behoof shall be made to his Highness, and to his Heirs, Kings, in his or their Name or Names, by these Words, *Domino Regi* and to none other Person or Persons to his Use, and to be paid to his Highness by these Words, *Solvend' eidem Domino Regi, hæred, vel executoribus suis*, with other Words used and accustomed in common Obligations; and that all such Obligations and Specialties so to be made, shall be good and effectual in the Law to all Purposes and Intents, and shall be of the same Nature, Kind, Quality, Force and Effect to all Intents and Purposes, as the Writings obligatory taken and knowledged according to the Statute of the Staple at *Westminster* hath at any Time before the making of this present Act been taken, used, exercised, and executed against any Lay Person or Persons, any Law, Usage, or Custom, to the contrary thereof notwithstanding.

Obligations made to the King shall be in the Nature of a Statute Staple, and shall be mad Domino Regi, &c.

LI. And that all such Obligations and Specialties, the Debt whereof not being paid nor contented in the Life of the King, shall come, remain, and be to the Heirs, or Executors of the King, at the free Liberty, Disposition, Assignment, and Appointment of the same King, to whom such Obligations or Specialties shall be made as is aforesaid. And if any Person or Persons, in his or their own proper Person or Persons, after the said first Day of *May*, make or take any Obligation or Obligations to the Use of the King's Majesty, or of his Heirs, Kings, otherwise than is before expressed; that then such Person or Persons only, that shall so offend contrary to this present Act, for his or their so doing shall have and suffer such Imprisonment, as shall be assessed and adjudged by the King, or his most Honourable Council daily attendant upon his Highness most Royal Person.

Who shall have the King's Specialties after his Death

LII. And that all Suits to be made after the first Day of *April* next coming for the Recovery of or for any the King's Debts, in any of the King's Court mentioned in this Act, of or upon any Obligation or Specialty dated or delivered before the making of this present Act, or which shall be dated and delivered to the King, or to his Use, afore the second Day of *May* next coming, shall be taken, sued, and pursued in the Name of the King, and in the Name of none other Person or Persons, to whatsoever Person or Persons the said Obligations or Specialties, or any of them be, have been, or shall be made to the King's Use.

All Suits for the King's Debts to be in his own Name.

LIII. And that all Suits, Process, Judgments, Decrees, and Executions hereafter to be taken, pursued, or given for the King in any the King's Courts mentioned in this Act, of or

upon any of the same Obligations last afore mentioned, shall be of the same or like Strength, Force, Effect and Intent in the Law to all Purposes, only against all and all Manner such Person and Persons as been bound in such Obligations or Specialties, as well Spiritual as Temporal, as against their Heirs, Successors, Executors and Administrators, and every of them, and against none other, as Writings obligatory taken and acknowledged according to the Statute of the Staple at *Westminster*, at any Time before the making of this present Act, have been used to be taken, exercised, and executed against any Lay Person or Persons.

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33 Henry VIII. c. 39.

Process, Judgment and Execution for the King to be in the Nature of the Statute Staple.

LIV. And that the King in all Suits hereafter to be taken in or upon any Obligations or Specialties made or hereafter to be made to the King, or any to his Use, shall have and recover his just Debts, Costs and Damages, as other common Persons use to do in Suits and Pursuits for their Debts. And that all such Suits as now be depending in the Name of any common Person to his Grace's Use, whereof no Verdict is, or before the Feast of *Easter* next coming shall be given or passed, or no *Exigent* awarded, shall abate, be void, and of none Effect; and nevertheless the King, by the Authority aforesaid, shall have his Suit and Remedy for the said Debt so being in Action and Process, in form as is aforesaid, in any of the Courts in this Act mentioned; any Thing in this Act to the contrary thereof notwithstanding.

The King in all Suits for Debt shall recover his Costs and Damages

LV. And it is further enacted by the Authority aforesaid, That all and every Suit and Suits, which hereafter shall be had, made, or taken of, for or upon any Debt or Duties, which heretofore hath grown or been due, or that hereafter shall grow or be due to the King, in the several Offices and Courts of his Exchequer, Duchy of *Lancaster*, Augmentations of the Revenues of his Crown, Surveyors General of his Manors, Lands and Tenements, Master of the Wards and Liveries, and Court of the First-fruits and Tenths, or in any of them, or by Reason or Authority of any of them, shall be severally sued in such one of the said Courts and Offices, in the which Court and Office, or by Reason of the which Court and Office, the same Debt or Duty did first grow or become to be due, or hereafter shall grow or become due, or in the which Office or Court the Recognisance, Obligation, or Specialty is or shall be or remain. And every such several Suit and Suits shall be made in every of the said several Offices and Courts, under the several Seals of the said several Courts, by *Capias*, *Fieri facias*, *Subpœna*, Attachments and Proclamations of Allegiance, if need shall require, or any of them, or otherwise, as unto the said several Courts shall be thought by their Discretions expedient for the speedy Recovery of the King's Debts.

Suits for the King's Debts shall be in the Courts where they shall be due.

Process that shall be awarded in the said several Courts for the Recovery of the King's Debts

LVI. And that the said Court of Exchequer, and all and every of the said Courts, shall have whole and full Authority and Power to hear and determine all and every such Suit and Suits as hereafter shall be taken, commenced and pursued for

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33 Henry VIII
c 39

the Intent above specified, and thereupon to award, make and do Execution by and upon th Body, Lands and Goods of the Party or Parties that shall be so condemned accordingly.

The Authority of the Courts of Exchequer, Wards and Duchy.

LVII. And also shall have full Power and Authority to hear and determine all and all Manner of Debts, Detinues, Trespasses, Accompts, Reckonings, Wastes, Deceits, Negligences, Defaults, Contempts, Complaints, Riots Quarrels, Suits, Strifes, Controversies, Forfeitures, Offence, and other Things, whatsoever they shall be, which hereafter shall grow, be moved, stirred, procured, pursued or arise, in, for or upon any Matter, Cause or other Thing assigned, committed or appointed, or hereafter to be assigned, committed or appointed to the several Directions, Orders and Governances of the same Courts, or any of them, or for or upon any Manner of Thing or Things which may or shall touch, or in any ways concern the same, wherein the King shall be only Party, and also all Manner of States for Term of Years between Party and Party concerning the Premisses; and to correct and punish by their Discretions all and every Person and Persons, which before them shall be convicted of any of the Premisses, according to the Nature, Quality and Quantity of his or their Offence or Offences, Cause or Causes, Matter or Matters, all and all Manner of Treasons, Murders, Felonies, Estates, Rights, Titles and Interests, as well of Inheritance as of Freehold, other than Jointures for Term of Life only excepted and always reserved

Title pretended to Lands sold or exchanged by the King

LVIII. And be it enacted by the Authority aforesaid That if any Person or Persons shall make or pretend any Claim, Right, Title, Interest or Possession in or to any Manors, Lands, Tenements or Hereditaments, bargained, sold or exchanged, or hereafter to be bargained, sold or exchanged by the King our Sovereign Lord, to any Person or Persons in Fee-simple or Fee-tail, by his Highness' Letters Patents, made or to be made thereof under the Great Seal of *England*, upon which Letters Patents there is or shall be reserved any annual Rents or Farms payable to the King's Highness, his Heirs or Successors, in his said Court of Augmentations; or demand or ask any Rents, Annuities, Offices, Fees or other Profits, in, out, or of any such Manors, Lands, Tenements, or Hereditaments, contained or to be comprised in any such Letters Patents, made or hereafter to be made, as is aforesaid Or if our

The King pretending Title to any Lands by him sold or exchanged

said Sovereign Lord, his Heirs or Successors, shall make or pretend any Claim, Right, Title, Interest, or Possession in or to any Manors, Lands, Tenements, or Hereditaments bargained, sold or exchanged, or to be bargained, sold or exchanged by the King, his Heirs or Successors, to any Person or Persons in Fee-simple or Fee-tail, by his or their Letters Patents thereof made, or hereafter to be made, under his or their Great Seal of *England*, upon which Letters Patents is or shall be reserved any annual Rents or Farms payable or which shall be payable to the King, his Heirs or Successors, in his said Court of Augmentations; or if the King, his Heirs or

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Successors, demand or ask any Rents, Annuities or other Profits or Hereditaments of any Estate of Inheritance in, of, or out of any Manors, Lands, Tenements or Hereditaments contained or comprised, or to be contained or comprised, appointed or to be appointed or assigned to the said Court of Augmentations, in any Letters Patents made, or hereafter to be made as is aforesaid; that then the Chancellor of the said Court of Augmentations, by the Assent of the Council of the said Court, or the more Part of them, shall have Power and Authority, by Authority of this Act, to examine all such Demands, Rights, Titles, Interests and Possessions, Rents, Annuities, Offices, Fees, and other Profits and Hereditaments, whatsoever they shall be, and every of them so to be demanded, pretended, claimed or asked as is aforesaid, and by Witness, Proofs and other Ways and Means by their Discretions, to hear and determine the same. And in case the King's Patentees in any such Letters Patents as is aforesaid, or any of them, their Heirs, Successors or Assigns, shall be compelled by the Authority of the said Court of Augmentations, by Decree or Judgment of the same Court, to render and yield to any Person or Persons, in Fee-simple or Fee-tail, the Lands, Tenements or Hereditaments comprised or specified in any such Letters Patents, or any Parcel of them, or to suffer any Person or Persons to have and enjoy any Offices, Rents, Annuities, or other Profits or Hereditaments in Fee-simple or in Fee tail, out or of the same, or out of any Parcel thereof, and that it shall appear in the said Letters Patents, that the King, his Heirs or Successors, is or shall be bounden, or of Right and Equity ought to recompense and satisfy the said Patentees, their Heirs, Successors, Executors or Assigns, or any of them, of and for such Manors, Lands, Tenements or Hereditaments, Annuities, Rents, Offices, Fees, or other Profits recovered in Fee-simple or Fee-tail, by Decree or Judgment of the said Court as is aforesaid, or else to discharge and acquit the said Patentees, their Heirs, Successors, Executors and Assigns, of or for any Rents, Annuities, Offices, Fees, or other Profits aforesaid, recovered by Decree or Judgment in Fee-simple or Fee-tail as is abovesaid. Or if it shall appear unto the said Court of Augmentations, or unto the more Part of them, that the King, his Heirs or Successors, of Right and Equity, ought to have, recover, or enjoy in Fee-simple or Fee-tail, any Manors, Lands, Tenements or Hereditaments, in any such Letters Patents comprised, or Rents, Annuities, Offices, Fees or other Profits, in, out or of the same; that then, in all and every such Case and Cases, the said Chancellor of the Augmentations for the Time being, with the Assent of three or more such Persons as hereafter shall be named by the King, his Heirs or Successors, shall have full Power and Authority, without any Bill or Warrant to be signed or sued from the King, his Heirs or Successors, for the same, as well to recompense and satisfy the Party or Parties grieved, so much in Money of the King's Treasure remaining in the said Court of

The King demanding Rents or Profits out of such Lands.

In what Cases the Court of Augmentations, without other Warrant, may make Recompense to any Person that is wronged.

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Augmentations, as the said Manors, Lands, Tenements, Rents, Annuities, Offices, Fees, or other Profits or Hereditaments lost or recovered by Decree or Judgment of the said Court of Augmentations as is aforesaid, shall be worth to be sold, or otherwise discharge and acquit such Person or Persons thereof, according to his or their Letters Patents; as also to make and take Order, Direction, Decree and Judgment for the King, his Heirs and Successors, for the Recovery, Attaining and having of all and singular such Manors, Lands, Tenements, Rents, Annuities, Offices, Fees, Profits and Hereditaments, and all and every other Thing and Things, which the King, his Heirs and Successors, by and upon such Examination and Examinations, ought, should and shall be justly intitled to have, recover, possess or enjoy in Fee-simple or Fee-tail, and the same Decree, Direction, Order and Judgment to be good and effectual in the Law, to bind all Parties and Privies to the same to all Intents and Purposes. And where any Decree or Judgment, which shall be given in the said Court of Augmentations for any the Premises, extend to the Loss of the King's Patentee or Patentees, their Heirs, Successors, Executors or Administrators, but for Term of Life or Lives of the Demandant or Demandants, Plaintiff or Plaintiffs, or for Term of Years, the Loss whereof the King is bounden and ought to recompense, discharge, or acquit by his Letters Patents; then the said Chancellor of the Augmentations shall have full Power and Authority to recompense or discharge the same in Money as is aforesaid, or else to recompense the same of the Lands, Tenements, Hereditaments and Possessions limited to the Survey and Governance of the said Court of Augmentations, to be granted under the Seal of the same Court by the Discretion of the said Chancellor, as shall seem to him best for the King's Profit, without any Bill or Warrant to be sued or signed by or from the King for the same. And that every such Recompence, Satisfaction and Discharge to be made by Authority of this Act to any Person or Persons by the said Chancellor as is aforesaid, shall be good and effectual against the King, his Heirs and Successors; any Law, Usage or Custom to the contrary thereof notwithstanding.

A Loss extending by a Decree to the King's Patentee for Life or Years, how to be made good.

The Courts erected by this Act were united to the Exchequer, pursuant to the Powers granted by 1 M. stat. 2. c. 10.

LIX. And it is farther enacted by the Authority aforesaid, That every of the said Courts shall have full Power and Authority by Force of this Act, to set such Fines, Penalties and Amerciaments upon Parties, Sheriffs, Officers, and other Persons, for his and their Defaults, Contempts, Negligences or Misdemeanors, as unto the said Courts, or unto any of them, shall be reasonably considered and thought expedient, and that all and every Trial and Trials, of all and all Manner of Suits, Bills, Plaints, Informations, Declarations, Complaints, Answers, Replications, Allegations, Causes, Matters and Issues, or any of them, to be pursued, made, or tried in the said several Courts, or any of them, shall be made and tried by due Examination of Witness, Writing, Proofs, or by such other Ways or Means as by the said several Courts,

The Authority of the foresaid Courts to set Fines, &c. upon Offenders.

Trials in the said Courts.

No. 10. 33 Henry VIII. c. 39.

or by any of them, shall be thought expedient; and that all and every such Judgment and Judgments, Decree or Decrees, Examination and Examinations shall be good, perfect, and in full Strength, Force and Effect in the Law to all Intents, Constructions and Purposes.

The chief Officers of the said Courts may discharge Recognizances taken there.

'LX. And where divers and sundry Persons stand 'bounden to the King's Highness in divers great and notable 'Sums of Money, by Recognizance or other Bonds in the said 'several Courts, for Debts due to the King's Highness, as well 'for the Purchase of Lands and Woods, and Performance of 'Conditions, as also for divers and sundry other Causes: And 'albeit the same Persons have well and truly satisfied, contented, and paid the same Debts, or performed the Conditions of 'the same Recognizances, or other Bonds, yet the same 'Recognizances or other Bonds, cannot be made void without 'the King's especial Warrant, which should be much Unquietness to the King's Majesty; and also very chargeable to his 'Grace's Subjects to sue to his Highness from Time to Time 'for the same: In Consideration whereof, and forasmuch as 'the said Persons being so bounden by Recognizance or in 'other Bonds, may by divers Casualties lose their Acquittances, whereby great Danger and Peril may grow to them, their 'Heirs, Executors and Successors:' Be it therefore enacted by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That upon the Sight of the Acquittances made or to be made for the Payment of the said Debt or Debts, or Sum or Sums of Money growen or to be growen, or due, and sufficient Proof made, or hereafter to be made, before the said several Head Officers for the Time being of the said several Courts, as the Case shall rise or grow, or if the Condition of the same Recognizance or Bond be performed or kept; that then every such several Head Officer for that Recognizance taken, or to be taken by him or any of his Predecessors, or of any other Bond for that Time being within his Charge and Cure, shall have full Power and Authority to cancel and make void the said Recognizance or other Bond, calling to him such of the same Court as to him or them shall seem most convenient for the Cancellation of the same Recognizance or Bond.

LXI. And be it enacted by the Authority aforesaid, That the same Cancellation so made shall be a sure and sufficient Discharge of the same Recognizance or other Bond, to all and every such Person or Persons, as do or shall stand bounden in the same Recognizance or Bond so cancelled, against the King's Highness, his Heirs, Executors and Successors for ever.

Discharging of Recognizances taken for Appearance or Contempt.

LXII. And be it further enacted by the Authority aforesaid, that the same several Head Officers for the Time being, in every of their said several Courts, shall have full Power and Authority to discharge, cancel or make void, by his or their Discretion, all and singular Recognizances now made, or hereafter to be made in the said Court, for any Appearance or

No. 10. 33 Henry VIII. c. 39.

other Contempt; and that the same Head Officer or Officers, and the Parties so bounden and to be bounden, to be discharged against the King our Sovereign Lord, his Heirs, Executors, and Successors, for the Cancellation of the same Recognizance.

27 H. 8. c. 27.

'LXIII. And where the King's Majesty sithen the making 'of the same Statute in the said twenty-seventh Year of his 'noble Reign, of his own meer Motion, Liberality and Benignity, hath freely given and granted by his sundry Letters 'Patents under his Great Seal of *England*, unto divers and 'sundry of the Nobles and Lords, as well Spiritual as Temporal, of this his Realm, and also unto divers and many other 'Persons and Bodies Politick, to their Heirs or Successors, and 'to the Heirs of their Bodies, or for Term of Life or Lives, 'divers and many sundry Honours, Castles, Manors, Lands, 'Tenements, Rectories, Pensions, Portions, and other Hereditaments, which then were in the Order, Governance and 'Survey of the same Court of the Augmentations of the Revenues of his Grace's Crown, or out of any other of the said 'several Courts, reserving unto his Majesty, his Heirs and Successors, by the same Letters Patents, one yearly Rent in the 'Name of one Tenth, or the tenth Part of the yearly Value of 'the same Premisses, or any other Tenth payable and to be 'paid in the same Courts, or to the Officers of the same Courts 'deputed and assigned for the same, at one certain Feast or 'Day in the same Letters Patents mentioned and declared; 'which said Persons so advanced, notwithstanding they have 'sithen and after the making of the same Letters Patents peaceably enjoyed the same Manors, Lands, Tenements and 'Hereditaments so given, and thereof have quietly perceived 'and taken the Issues, Revenues and Profits thereof; yet 'nevertheless divers of the same Persons have not, at the Days 'and Feasts assigned and limited unto them in the same Letters 'Patents, nor yet in long Time after the same Days and Feasts 'of Payment thereof, contented and paid in the same Courts, 'or to the Officers of the same Courts assigned and deputed 'for the same, the said yearly Rent or Rents so reserved to 'the King's Highness, contrary to their Duties, and against all 'Reason and good Conscience:' In Consideration whereof be it therefore now ordained, enacted and established by the Assent of the King's Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person of what Estate, Degree or Condition soever he be, or Body Politick, to whom the King's Majesty hath by his Letters Patents under his Great Seal of *England*, or under the Great Seal of the same Court of Augmentations, given or granted, or hereafter shall give or grant, with like Reservation of Rent or Rents, any Manors, Lands, Tenements, Rectories, or other Hereditaments whatsoever, which were or hereafter shall be in the Order, Governance and Survey of the same Courts, or any of them, to be had to them and their Heirs or Successors,

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or for any other Estate of Inheritance, or for Term of Life or Lives, yielding and reserving to the same our said Sovereign Lord the King, his Heirs or Successors, one yearly Rent at one certain Day or Feast in the same Letters Patents expressed, mentioned and declared, and to be paid into the same Courts; that if the same Persons, Bodies Politick, their Heirs or Successors, or Assigns, or any of them, do not truly content or pay, or cause to be contented or paid unto the Treasurer of the said several Courts, or to the general or particular Receiver of the same several Courts, deputed and assigned for the same for the Time being, to the Use of the King's Highness, at the Day or Feast limited by the same Letters Patents, or within three Months next and immediately after the same Day or Feast of Payment thereof, all such Sums of Money, which been or hereafter shall be due, reserved to the King's Majesty, his Heirs and Successors, by the same Letters Patents, or by any of them, or make sufficient Tender thereof to the said Treasurer, or general or particular Receiver; that then every of the same Persons, Bodies Politick, their Heirs, Successors or Assigns, for Lack and Default of Payment of the same Rent, to forfeit and lose to the King's Majesty, his Heirs and Successors, as much Money as the fourth Part of the same Rent so reserved, or hereafter to be reserved for one Year, doth or shall amount unto, for and in the Name of one Pain, over and above the same Rent reserved, or hereafter to be reserved. And if it happen the same Persons or Bodies Politick, their Heirs, Successors or Assigns, or any of them, do not, within one half Year next after the Day or Feast expressed in the same Letters Patents, content or pay, or lawfully tender unto the same Treasurer, or general and particular Receiver, to the Use of the King's Majesty, his Heirs or Successors, as well the said yearly Rent so reserved, or hereafter to be reserved, as also the said Money forfeited for and in the Name of a Pain; that then the same Persons, Bodies Politick, their Heirs, Successors or Assigns, so offending, shall forfeit and lose to the King's Majesty, his Heirs and Successors, so much Money as the Moiety or half Deal of the same Rent reserved or to be reserved for one Year doth or shall amount unto, over and above the said Rent reserved or to be reserved; and so to forfeit and lose for every Half Year after so much Money as the whole Rent reserved or to be reserved for one whole Year doth or shall amount unto, until the same Rent so reserved or to be reserved, and the Arrearages of the same, and also the said Sums of Money so forfeited and lost for a Pain, been unto the same Treasurer, or general or particular Receiver, truly satisfied, contented and paid, to the Use of the King's Highness, his Heirs and Successors.

A Remedy for Tithes not paid issuing forth of Abbey Lands given by the King to others.

The Penalty for Default of Payment at the Day assigned, or within three Months after.

The Penalty for Default of Payment within a Year.

LXIV. And be it also enacted by the Authority aforesaid, That it shall be lawful to the same Treasurer, and general or particular Receiver, to distrain as well for the same Rent so reserved or to be reserved, and for the Arrearages of the same,

A further Remedy for the Tenth, and Money forfeited in the Name of a Penalty.

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23 Henry VIII. c 39

as also for the said Sums of Money, so forfeited, or to be forfeited and lost, for and in the Name of the Pain aforesaid And also the Head Officer or Officers of either of the same Courts for the Time being, upon Certificate to him made or to be made of the same Default and Contempt, shall and may award such Process out of the same Courts against the same Offender for not paying of the said Rent so reserved or to be reserved, and also for the same Sums of Money forfeited and to be forfeited by this Act, as by his or their Discretion shall seem convenient.

Acquittance for the Tenth.

LXV. And be it also enacted by the Authority aforesaid, That if any Person or Persons hereafter make lawful Payment to any of the said Treasurers, or general or particular Receivers of any of the same Courts, deputed and assigned for the same, of any Sum or Sums of Money due to the King's Highness, his Heirs or Successors, for any yearly Rent or Tenth, and upon or after such Payment offer unto the same Treasurer, or general or particular Receiver, one lawful and sufficient Acquittance ready made, to be assigned by the same Treasurer, or general or particular Receiver, witnessing the Receipt of the said Sum or Sums of Money so paid, that then the said Treasurer, general or particular Receiver, shall with his own Hand assign the same Acquittance without taking any Fee or Reward for the making of the same Acquittance, upon Pain to forfeit and lose for every Time offending contrary to this Act, forty Shillings; one Moiety whereof to be to the King's Highness, and the other Moiety to the Party that will pursue for the same, and if the Parties which hereafter shall happen to pay to the same Treasurer, or general or particular Receiver, any such Sum or Sums of Money, and do not bring an Acquittance with him to be assigned, as is beforesaid; that then if the same Treasurer, or general or particular Receiver, upon Request to him made, shall make and deliver unto the same Party one sufficient Acquittance, testifying the same Receipt, that then the same Treasurer, or general or particular Receiver, or any of his Clerks, shall receive or take of the same Party for the making of the said Acquittance, not above Four-pence, upon Pain to forfeit for every such Acquittance twenty Shillings for which he or they shall happen to take above the said Sum of Fourpence, to be recovered as is beforesaid, that is to say, the one Moiety thereof to the Use of the King's Highness, his Heirs and Successors, and the other Moiety thereof to the Party that will pursue for the same.

LXVI. And be it also enacted, That the same Acquittance shall be a sufficient Discharge according to the Tenor and Effect of the same.

How much he shall pay for an Acquittance which doth receive any Annuity.

LXVII. And be it also further enacted and ordained by the Authority aforesaid, That if any of the same general or particular Receivers, which now be or hereafter shall be within any of the said Courts, happen to pay to any Person or Persons any Annuity, Pension, or other Rent, that then if the same Person or Persons, upon the Receipt thereof, deliver unto the same

No. 10. 33 Henry VIII. c. 39

general or particular Receiver one sufficient and lawful Acquittance sealed and signed, testifying the same Receipt, that then the same general or particular Receiver shall receive the same Acquittance, without taking or receiving any Fee or Reward for the making of the same; and if the same Party to whom the said general or particular Receiver have so contented and paid any such Annuity, Pension or Rent, do not bring with him one sufficient Acquittance signed and sealed, testifying the Receipt of the same Money, by reason whereof the same general or particular Receiver, by himself or his Clerk, maketh one Acquittance for the Receipt of the same Annuity, Pension or Rent, that then the same Receiver or his Clerk shall not receive or take for the making of such Acquittance, which he shall so happen to make, above Four-pence, upon Pain to forfeit for every such Acquittance which he shall happen to refuse, being ready made and offered to be delivered to him, as is abovesaid, twenty Shillings; and for every Acquittance which he shall hereafter happen to make for any the Payments aforesaid, and to receive for the making of the same Acquittance above the Sum of Four-pence, to forfeit twenty Shillings; the one Moiety to the King, and the other to the Party that will sue for the same; and also that the same general or particular Receiver, or their Deputies, which hereafter shall happen to pay any such Annuity, Pension or Rent, shall not retain or take of the Party to whom he shall happen to pay the same, in the Way of Reward or otherwise, not above the Sum of Four-pence for every Pound which the same general or particular Receiver shall so happen to pay, upon Pain to forfeit *vi. s. viii. d.* for every Penny which he or they shall happen to receive above the said Sum of Four-pence, for every Pound which he or they shall so happen to pay; the one Moiety of the said Forfeiture to be to the King, and the other Moiety to the Party that will sue for the same, and that all the said Suits concerning the said Forfeitures may be commenced and pursued by Bill, Information or Action, in which Suit none Essoin, Protection or Wager of Law to be admitted.

The Receiver shall take but iv. d. a Pound.

LXVIII. And be it further enacted, That if any Person or Persons hereafter happen to tender or offer unto any of the Auditors of the same several Courts, for the Time being, any of the King's Letters Patents, Decrees of any of the same several Courts, Grants, Indentures of Leases, as well for Term of Years as for Term of Life or Lives to be inrolled before the same Auditor, according to his Office; that then the same Auditor, upon the same Tender or Offer, shall inroll the same, or as much of the same Letters Patents, Decrees, Grants or Indentures, as shall appertain to his said Office; and if any of the same Auditors, or any of their Clerks, or any other to their Use, or to the Use of any of them, receive and take for the Enrolment of any of the same Letters Patents, Decrees, Grants or Indentures, or for the Allowance of the same, above the Sum of three Shillings Four-pence, that then the same Auditor, or his Clerk, so offending, shall forfeit Six Shillings Eight-pence

The Auditor's Fees for Inrolments.

No. 10.
33 Henry VIII. c. 39.

for every Penny which the same Auditors, or any of them, shall happen at any Time hereafter to receive contrary to the Form aforesaid; the one Moiety of the same Forfeiture to be to the King's Highness, and the other Moiety to him that will sue for same by such Manner and Form as is aforesaid.

Auditors shall cause Proclamation to be made in four Market-Towns twenty Days before their coming.

LXIX. And be it also further enacted by the Authority aforesaid, That every Auditor of every the said several Courts, yearly in every County within their said several Limits, by the Space of twenty Days or more before their Audit, shall proclaim and declare in four several Markets or other Places, the Place and Days where and when they will keep their several Audits in the same Shire, upon Pain to forfeit for every Time doing the contrary five Pounds, the one Moiety whereof to be to the King's Highness, and the other Moiety to the Party that will sue for the same in Form aforesaid.

Auditors and Receivers shall make their Precepts to Bailiffs, &c.

LXX. And that also every of the Auditors of the said several Courts, being severally assigned to their several Limits, and every the particular Receivers of the same several Courts, being also severally assigned and joined with the same several Auditors in their said several Limits, after and between every of the Feasts of St. *Michael* the Archangel and *Christmas,* shall direct and award their several Warrants and Precepts under their Seals to every of the Receivers, Bailiffs, Reeves and other Officers whatsoever accountable before the same Auditors, and by the same Warrant or Precept to charge and command, in the Name of our said Sovereign Lord the King, every of the said Receivers, Bailiffs, Reeves, and other Officers, to appear before them at one certain Day and Place in the same Warrant or Precept to them prescribed, there to declare and make a just and true Accompt of all such Receipts whereof they be accountable and owe to Account.

A Remedy against Accomptants which make Default of Appearance or Payment.

LXXI. And after if the same Auditors and particular Receivers do repair unto the same Place, and there keep their Audit according to the same Proclamations, Precept and Warrant; that then if any Receiver, Bailiff, Reeve or other Officer, being accomptable of or for any of the Manors, Lands, Tenements or other whatsoever Hereditaments now remaining, or which hereafter shall be and remain in the Order, Governance or Survey of any of the same several Courts, be lawfully warned, as well by the same Proclamation, or by Precept or Warrant in Writing sealed, and in the Name of any of the Auditors of the said several Courts personally to appear by himself, or by his sufficient and lawful Deputy, before the same Auditor and Receiver, at one certain Day or Place in the said Warrant or Precept prescribed, there to make and declare a just and true Accompt of all Receipts of his said Office: And if the same Receiver, Reeve, Bailiff and other Officer, so being lawfully warned, do not appear before the same Auditor and Receiver at the same Day and Place in the said Warrant expressed; or if the same Receiver, Bailiff, Reeve or Officer do, at the same Day and Place to them prescribed, appear, and will not accompt before the same Audi-

tor, according to the Tenor and Effect of the same Precept and Warrant; or if the same Receiver, Bailiff, Reeve or other Officer accomptable, do by himself, or by his sufficient and lawful Deputy, appear before the same Auditor and Receiver, and then and there enter into his or their Accompt before the said Auditor, and after the same Accompt finished and ended, if the same Receiver, Bailiff, Reeve or other Officer, do not content and pay unto the Treasurer of the same several Courts, or to the general or particular Receiver of the same County for the Time being, as the Case shall require, within three Weeks next and immediately after the same Accompt fully finished and ended, all such Sums of Money, which upon the Determination of his said Accompt he shall happen to be found in Arrearages, and the same Default and Contempt being duly proved before the head Officer and Officers of the said several Courts for the Time being; that then every such Receiver, Bailiff, Reeve or Officer so offending, to forfeit and lose his said Office, and also his Fee which he or they had and received for the exercising of the same Office.

No. 10. 33 Henry VIII. c. 39.

LXXII. And be it also further enacted by the Authority of this present Parliament, That if any of the said Receivers, Bailiffs, Reeves or other Officers, upon the Declaration of their said Accompts, do willingly conceal and withdraw any Rent, Revenue, Fine, Heriot or other Casualty whatsoever it be, of the which he ought to have made Accompt, and the same duly proved before the said head Officer or Officers for the Time being; that then every such Receiver, Bailiff, Reeve or Officer so offending, to forfeit and lose his said Office and Fee which he had for the exercising of the same, and also three Times as much as he hath so concealed and withdrawn: And that the said head Officer or Officers of the same several Courts, for the Time being, immediately upon Certificate to him made of the same Default, Contempt or Offence, shall award Process in Nature of Attachment against the same Receiver, Bailiff, Reeve or other Officer, as well for the same Arrearages remaining in the Hands of the same Receiver, Bailiff, Reeve or Officer, as also for the Penalty of their Recognizance or Bond, in which the same Receiver, Bailiff, Reeve or Officer standeth bounden to our said Sovereign Lord the King, as also for the Contempt and Pain limited and appointed by this Act.

The Penalty if an Accomptant do withdraw any Rent.

LXXIII. And be it further enacted by Authority aforesaid, That in all Actions and Suits to be taken or pursued in any the Courts aforesaid, for the Recovery of any Debt or Debts, which now be, or that hereafter shall happen to appertain, accrue, remain, or be to the King, by Reason of any Attainder, Outlawry, Forfeiture, Gift of the Party, or by any other collateral Way or Means, it shall be sufficient in the Law to shew and alledge in the said Suit generally, that the Party to whom the said Debt or Debts was or did belong, such Year and Day did give the same Debt or Debts unto the King, or was attainted, outlawed, or other Offence, Forfeiture,

A Remedy for Debts which grow to the King by Attainder, Outlawry, Forfeiture, Gift, &c.

No. 10. 43 Henry VIII. c. 39.

Deed, Act, or Thing committed or done, by Reason whereof the said Debt or Debts did accrue, and ought to remain, come, and be to the King. And that the same Matter so to be shewed, alledged, or declared in a generality, without shewing and declaring the Circumstances thereof, shall be of as good Force and Effect in the Law to all Intents, Constructions and Purposes, as if the whole Matter thereof had been or were alledged and declared at large in every Point, according to the due Order of the Common Laws of this Realm.

The King shall be preferred in Suit and Execution.

LXXIV. And be it also enacted by the Authority aforesaid, That if any Suit be commenced or taken, or any Process be hereafter awarded for the King, for the Recovery of any of the King's Debts, that then the same Suit and Process shall be preferred before the Suit of any Person or Persons: And that our said Sovereign Lord, his Heirs and Successors, shall have first Execution against any Defendant or Defendants, of and for his said Debts, before any other Person or Persons, so always that the King's said Suit be taken and commenced, or Process awarded for the said Debt at the Suit of our said Sovereign Lord the King, his Heirs or Successors, before Judgment given for the said other Person or Persons.

Tenant in Fee-simple or Tail to pay his Ancestor's Debts to the King.

LXXV. And be it enacted also by Authority aforesaid, That all Manors, Lands, Tenements, Possessions and Hereditaments, the which now be, or that hereafter shall come or be, in or to the Lands, Possession, Occupation, or Seisin of any Person or Persons, to whom the same Manors, Lands, Tenements or Hereditaments have heretofore or hereafter shall descend, revert or remain in Fee-simple or in Fee-tail general or special, by, from, or after the Death of any his or their Ancestor or Ancestors as Heir, or by Gift of his Ancestors whose Heir he is, which said Ancestor or Ancestors was, is, or shall be indebted to the King, or to any other Person or Persons to his Use, by Judgment, Recognizance, Obligation, or other Specialty, the Debt whereof is or shall not be contented and paid; that then in every such Case the same Manors, Lands, Tenements, Possessions and Hereditaments, shall be and stand, by Authority of this Act, from henceforth charged and chargeable to and for the Payment of the same Debt, and of every Part thereof.

The King's Debts payable by the Heir, though in the Bond he be not named.

LXXVI. And that our said Sovereign Lord, his Heirs and Successors, at any Time hereafter shall not be barred, delayed, foreclosed, or excluded, to demand, have, and receive his or their just, due, and lawful Debts and Duties against any of his Subjects, as Heir or Heirs to any Person or Persons indebted to his Highness, or to other Persons to his Use, or which shall be indebted to his Highness, his Heirs or Successors, albeit this word *Heir* be not or shall not be comprised in such Recognizance, Obligation or Specialty, or that any such Person or Persons shall say or alledge, that he or they have not any Manors, Lands, Tenements or Hereditaments to them descended, but only such Manors, Lands, Tenements or Hereditaments, as be or shall be intailed or given to

Lands intailed chargeable.

them by any their Ancestors to whom they be Heirs, any Laws, Uses or Customs before this Time used or had to the contrary notwithstanding.

No 10 33 Henry VIII c. 39.

LXXVII. Provided always, That the King's Majesty, his Heirs and Successors, may at his or their Liberty and Pleasure demand, have and recover his or their said Debt or Debts, of and against any Executor or Executors, Administrator or Administrators of any such Person or Persons, which is, hath been, or shall be indebted in Manner and Form abovesaid, if the same Executor or Executors, Administrator or Administrators, shall have Assets in his or their Hands, in Deed or in Law, any Thing before-mentioned to the contrary notwithstanding.

The King may charge the Executors or Administrators

LXXVIII. Provided also, That if the said Manors, Lands and Hereditaments, or any of them, shall hereafter be recovered or evicted out of or from the Possession of any such Person or Persons, by any just or former Title, without Fraud or Covin, whose Manors, Lands, Tenements or Hereditaments have been or shall be charged or chargeable, as is abovesaid, that then all and every such Manors, Lands and Hereditaments, shall be clearly acquitted and discharged of and for the Payment of the same Debts, and of every Part thereof; any Thing before-mentioned to the contrary notwithstanding.

The Lands chargeable to the King recovered.

LXXIX. Provided always, and be it enacted by the Authority aforesaid, That if any Person or Persons of whom any such Debt or Duty is, or at any Time hereafter shall be, demanded or required, alledge, plead, declare or shew, in any of the said Courts, good, perfect and sufficient Cause and Matter in Law, Reason or good Conscience, in Bar or Discharge of the said Debt or Duty, or why such Person or Persons ought not to be charged or chargeable to or with the same. And the same Cause or Matter so alledged, pleaded, declared or shewed, sufficiently proved in such one of the said Courts, as he or they shall be impleaded, sued, vexed, or troubled for the same, that then the said Courts, and every of them, shall have full Power and Authority to accept, adjudge, and allow the same Proof, and wholly and clearly to acquit and discharge all and every Person and Persons that shall be so impleaded, sued, vexed, or troubled for the same, any Thing in this present Act before-mentioned to the contrary notwithstanding.

Sufficient Matter pleaded in Discharge of the Debt

LXXX. Provided also, and be it enacted by the Authority aforesaid, That if any Manors, Lands, Tenements or Hereditaments, which be, or at any Time hereafter shall be charged or chargeable to or with the Debt of our said Sovereign Lord, his Heirs or Successors, and be at any Time hereafter or shall be in the Seisin and Possession of divers and sundry Persons, other than the Obligor or Obligors, that then all and singular the said Manors, Lands, Tenements and Hereditaments, and every Parcel of them, shall be wholly and entirely, and in no wise severally, liable and chargeable to and with the Payment and Payments of the said Debts, of the said

Lands chargeable to the King in several Men's Tenures

No 10.
3, Henry VIII
c. 39.

Debt and Duty, any Thing before rehearsed to the contrary notwithstanding.

The Liberties of the Duchy of Lancaster saved.

LXXXI. Provided also, That this Act, nor any Thing therein contained, shall in any wise extend to minish, abrogate, or take away, any Realties, Liberties, Privileges, Franchises, Preeminences, Jurisdictions, Fines, Issues or Amerciaments, appertaining or belonging to the said Duchy of *Lancaster*, and County Palatine of *Lancaster*, or any of them, but that the same Liberties, Realties, Privileges, Franchises, Preeminences, Jurisdictions, Fines, Issues and Amerciaments, and every of them, shall still continue, remain, and be to the said Duchy of *Lancaster* and County Palatine, and to every of them, as fully, wholly and plenarily, as they were before the making of this present Act, any Thing in the same contained to the contrary notwithstanding.

Process and Executions for Debts growing in the Exchequer.

LXXXII. Provided alway, and be it enacted by the Authority aforesaid, That all Manner of Process, Processes, and Executions for Debts, only coming and growing in the Court of the Exchequer, shall be made in the same Court of the Exchequer, by such Officer and Officers, Clerk or Minister of the same Court, as hath been afore this Time used to be made, after and with such Kind of Process, Processes and Executions, as by this Act is limited and declared; any Thing in this Act contained to the contrary notwithstanding.

No. 11.

2 and 3 Edward VI. c. 4.—An Act for the Sheriffs of *England* to have certain Allowances upon their Accompts.

I. [Sheriffs upon their Accompts in the Exchequer, upon their Oath taken, shall be discharged of all such Monies as they cannot levy, and shall have their due Allowances.]

II. [The Statute of 34 and 35 H. 8. c. 16. touching Sheriffs, rehearsed and repealed.]

V. [Every Sheriff shall have Tallies of Reward.]

VII. [Sheriffs' Allowances that have no Tallies of Reward.]

IX. [Sheriffs' Allowances for Vicountiels and Possessions come to the King's Hands.]

X. [The Sheriffs shall be sworn to bring into the Exchequer Rolls of Parchment of Money which he hath or might have levied.—Process shall be awarded out of the Exchequer to enquire of the King's Debts.]

XI. [Allowance made to Commissioners for their Costs.]

No. 12.

7 Edward VI. c. 1.—An Act for the true Answering of the King's Majesty's Revenues.

No. 12.
7 Edward VI
c. 1.

Certain Officers accomptable to the King shall be bound with Sureties for their true Accompt and Payment

'FORASMUCH as the King's Majesty's Treasurers, and 'general and particular Receivers and Bailiffs of his 'Honours, Castles, Lordships, Manors, Lands and Tene-'ments, Reversions, Possessions and other his Hereditaments 'in *England*, *Wales* and *Calice*, and the Marches of the same, 'or elsewhere within the King's Dominions, have not so 'justly, speedily, neither duly made yearly Payments of such 'Sum and Sums of Money as hath been by them and every 'of them received of the King's Majesty's Revenues, Posses-'sions and Profits, into the King's Majesty's Treasury accord-'ing to their Duties, but yearly do detain and keep the same 'to their own Gain, Profit and Lucre, contrary to all Right, 'Truth and Equity, and to the manifest Injury, Wrong and 'Hindrance of and to the King our Sovereign Lord.'

Every Officer that now is accomptant to the King shall be bound for his true Accompt and Payment

II. Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That every Treasurer and general and particular Receiver, Collector and Bailiff, and other Minister Accomptant, which now is charged or chargeable with or for the Receipt of any of the King's Majesty's Money, Rents or Revenues whatsoever, not being bound with Surety or Sureties by Obligation, Recognizance or otherwise, to our late Sovereign Lord the King, or to our Sovereign Lord the King that now is, for or concerning their Office or Offices, before the xx. Day of *December* next coming, or at any Time or Times before the same xx. Day of *December*, if they or any of them be reasonably required, shall upon Pain of Forfeiture of his Office be bound to the King's Majesty by sufficient Writing obligatory in reasonable Sum or Sums of Money: The same Writing obligatory to be made with or upon Condition, that the Person which shall be so bounden, his Heirs, Executors, Administrators, Deputy or Deputies, or one of them, from Time to Time shall yield a perfect and true Accompt of all Sums of Money, and other Things that the same Treasurer and general and particular Receiver, Collector, Bailiff or other Minister Accomptant, shall, may, or reasonably might be charged with, concerning or by reason of his or their Office or Offices: And also shall make Payments of the same Sums of Money at such Days and Times, and in such Manner and Form, as hereafter in this Act is expressed and declared.

Every Officer to the King accomptant hereafter to be named shall be bound with Sureties for his

III. And be it further enacted, That all and every Person and Persons hereafter to be named, assigned or appointed to be Treasurer or general or particular Receiver, Collector or Bailiff, or Minister Accomptant of our said Sovereign Lord the King, shall before any their Entry, Executing, Using or

No. 12. 7 Edward VI. c. 1.

true Accompt and Payment.

Exercising of his or their Office or Offices whereunto he or they shall be so nominated or appointed, together with Surety or Sureties, acknowledge and make sufficient and lawful Bond or Bonds to the King's Majesty, in such Court of Record where the same Officer or Officers is or shall be accomptable and chargeable, that they, their Heirs, Executors, Administrators, Assigns or Deputies, shall truly accompt and pay all such Sums of Money as shall come to their Hands, or shall, may, or reasonably might be charged with concerning his or their Office or Offices to the King's Use, within the Circuits of their several Receipts or Collections, at such or like Days and Times, and in such Manner and Form as is abovesaid, to be contained in the Conditions of every of the said Bonds, upon Pain of Loss and Forfeiture of his or their Office or Offices, and of his and their Letters Patents of the same Office or Offices.

Receivers Precepts unto Accomptants to make Payment of their Collections due to the King at Easter.

IV. Be it further enacted by the Authority aforesaid, That every Receiver of the King's Majesty's Honours, Manors, Lands, Possessions, Rents and Revenues for the Time being, or his Deputy or Deputies, shall yearly make his several Precepts to all and singular the Collectors, Ministers and Bailiffs Accomptant within the Circuit of his Office, charging and commanding them on the King's Majesty's Behalf, by the same Precept, to appear before them personally, or by their sufficient Deputy or Deputies, for whom they will answer, within the County where the same Offices, Bailiwicks, Receipts or Collections do lie, at a certain Day and Place in the same Precept to be limited, and to pay to the King's Majesty's Use such Sums of Money as they ought to do by Reason of any of their said Offices, being due to our said Sovereign Lord the King at or before the Feast of *Easter*, which they have or may by any lawful or due Mean levy or receive within or by Reason of their said Offices or Collections: And that the same Precepts shall be severally delivered to every of the said Officers, Ministers and Bailiffs Accomptant, or to their Deputy or Deputies, or else be left at their Dwelling-houses, or at the Manor, Lordship or Place where their Receipt or Collection is or ought to be, twelve Days at the least before the Day of Appearance to them given and prefixed in the same Precept or Precepts.

The Penalty where an Accomptant maketh Default of Appearance or Payment.

V. And if any of the said Ministers, Collectors or Bailiffs Accomptant, upon or after any such Precept or Precepts at any Time hereafter made by any such Receiver, and being delivered and left in Form aforesaid, do make Default at the same Day and Place assigned and appointed in and by the said Precept or Precepts, that then the same Collector, Minister or Bailiff Accomptant so making Default, and not appearing as is aforesaid, and being thereof duly and lawfully convicted in the Court where the Revenue is or shall be answered, shall for the first Offence lose and forfeit to the King our Sovereign Lord his whole Fee for that Year wherein he shall so make Default, or the Value thereof; and for Non-payment of the said Money due and payable at or before the said Feast of

Easter unto our said Sovereign Lord the King, within or by reason of his said Office, Collection or Bailiwick, shall lose and forfeit for the first Offence of Non payment vi d of the Pound, in the Name of a Pain, for every Month after the said Day of Appearance, until the same Money shall be by him or his Deputy paid to the Hands of the said Receiver to the King's Majesty's Use

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c. 1

VI And after the first Default of Appearance made by any of the said Officers, and another like Precept by the said Receiver be made and delivered or left in Form aforesaid, then the said Officer or Officers making again Default, and being thereof lawfully convicted as is aforesaid, for the second Default and Offence for Non-appearance shall lose and forfeit to the King our Sovereign Lord his Office and Fee And for the said second Offence in the Non-payment of the said Money due and payable within and by Reason of his Office, Collection or Bailiwick, at or before the said Feast of *Easter*, shall lose and forfeit xii d of every Pound, in the Name of a Pain for every Month after the said last Day of Appearance and Default made as is aforesaid, until the same Money shall be by him or his Deputy paid to the Hands of the said Receiver, to the Use of our Sovereign Lord the King.

The Penalty for the second Offence

VII And further be it enacted by the Authority aforesaid That all and every Auditor and Auditors of our said Sovereign Lord the King of his Majesty's Honours, Manors, Lands, Possessions, Rents and Revenues for the Time being, or his or their sufficient Deputy or Deputies shall have full Power and Authority by Virtue of this Act yearly to make their Precept or Precepts to all Ministers, Collectors and Bailiffs Accomptant, commanding them on the Behalf of our said Sovereign Lord the King to appear and accompt before him or them personally, or else by their sufficient Deputy or Deputies, at a Place certain within the County where the same Lands and Possessions do lie, at the King's Majesty's Audit, to be holden there yearly between the Feast of St *Michael* the Archangel and the Nativity of our Lord God, of and for all Rents, Revenues and Profits due and payable within or by Reason of their said Offices, Collections or Bailiwicks, at or before the Feast of St *Michael* the Archangel next before the same Audit, expressing in the same Precept or Precepts the Time and Place when and where the same Ministers, Collectors and Bailiffs Accomptable, or their sufficient Deputy or Deputies, for whom they will answer, shall appear The same Precepts to be delivered to the same Ministers, Collectors, Bailiffs Accomptant or their Deputy or Deputies, or left at their Dwelling-houses, or at the Manor, Lordship or Place, where the Receipts or Collections is or ought to be, twelve Days at the least before the Day of Appearance to him or them prefixed in the same Precept or Precepts And if any Minister, Collector or Bailiff Accomptant do not appear before the said Auditor or Auditors, or his or their Deputy or Deputies at the said Audit, according to the said Precept; or else if he do

The Auditors' Precept to Accomptants to make Payment of their Collections due at Michaelmas.

The Penalty where an Accomptant maketh Default of

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c 1

Appearance or Payment

appear and refuse to accompt for his said Receipt, Collection or Bailiwick, before the said Auditor or Auditor, or his or their Deputy or Deputies, That then the said Minister, Collector or Bailiff Accomptant so making Default and not appearing or so refusing to accompt as is aforesaid, and being thereof duly and lawfully convicted in the Court where the Revenue is or shall be answerable, shall for his first Offence lose and forfeit to our Sovereign Lord the King his whole Fee for that Year wherein he shall so make Default, or the Value thereof And for the Non-payment of the said Money due and payable within his Collection Office or Bailiwick, at or before the same Feast of St *Michael* the Archangel, shall lose and forfeit to the King our Sovereign Lord, for his said first Offence, six Pence of every Pound, in the Name of a Pain, for every Month after the said Day of Appearance and Default made as is aforesaid, until he or his sufficient Deputy or Deputies shall accompt before the said Auditor or Auditors, or his or their Deputy or Deputies, for his said Collection, Receipt or Bailiwick, and also pay unto the Hands of the said Receiver or Receivers, all and every of such Sum and Sums of Money as shall be found justly due by the said Accomptant before the said Auditor or Auditors, or his or their Deputy or Deputies to the King's Majesty, upon the Foot and Determination of his Accompt: And after the first Default of Appearance made before the said Auditor or Auditors, or his or their Deputy or Deputies, by any of the said Officers Accomptant, being so warned as is aforesaid, and after another like Precept made and delivered or left in Form aforesaid, that then the said Officer or Officers that so shall make such Default of Appearance for the said second Offence in making Default in his Appearance as is aforesaid, and being thereof duly and lawfully convicted in the Court where the Revenue of his said Office is or shall be answerable, shall lose and forfeit to the King our Sovereign Lord his said Office and Fee

The Penalty for the second Offence

VIII And for the second Offence in Non-payment of the said Money, due and payable within and by Reason of his Receipt, Collection or Bailiwick, at or before the said Feast of St *Michael* the Archangel, shall lose and forfeit to our Sovereign the King, xij d of every Pound, in the Name of a Pain, for every Month after the said last Day of Appearance and Default made as is aforesaid, until he or his sufficient Deputy or Deputies shall accompt before the said Auditor or Auditors, or his or their Deputy or Deputies, for the said Receipt, Collection or Bailiwick, and also pay unto the Hands of the said Receiver or Receivers, or his or their Deputy or Deputies, to the King's Use, all such Sums of Money as shall be justly found due by the said Accomptant, upon the Foot and Determination of his said Accompt

Within what Times the King's Receivers shall make Payment of the

IX And further be it enacted by Authority aforesaid, That all and every Receiver and Receivers of the King's Majesty's Honours, Manors, Lands, Possessions, Rents or Revenues, shall make ready and full Payment yearly to the Trea-

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surer or general Receiver of the Court where the said Revenue is or shall be answerable, or otherwise as he or they are or shall be appointed and assigned by sufficient Warrant, of all such Sums of Money as he or they shall know to be due to our Sovereign Lord the King, and can by any lawful or due Mean obtain, get, have or receive, of the Rents or Revenues of our said Sovereign Lord the King, with or by Reason of their Offices, being due at or before the Feast of *Easter*, by the xx. Day of *June* then next following at the furthest. And also shall make like Payment yearly of all their like Receipts of the Rents and Revenues of our said Sovereign Lord the King that shall be due at or before the Feast of St. *Michael* the Archangel, by the xx. Day of *January* then next following at the farthest, upon Pain of Loss and Forfeiture for every Default at any of the said Days, ij d. of every Pound, for every Day that the said Money so by them or any of them shall be unpaid.

Money by them received.

X. And also it is further enacted, That all and every the said Receiver and Receivers, or their Deputy or Deputies, for whom they will answer, shall enter into their Accompt yearly in the Term of St *Hillary*, and fully and clearly finish the same Accompt before the tenth Day of *March* then next following, and make full and ready Payment of the Money that shall appear to be due upon the Foot and Determination of the same Accompt, before the xx. Day of the said Month of *March*, upon Pain of Forfeiture to our said Sovereign Lord the King, their Offices and Fees, and iv d. of the Pound for every Day that they shall detain and withhold the same Money, without making any Payment thereof as is aforesaid.

When the King's Receivers shall account.

XI. And further be it enacted by the Authority aforesaid, That all and every Receivers, Collectors and Bailiffs of any of the King's Honours, Manors, Lands, Tenements, Rents or Revenues, for Lack of Payment and levying of their said Rents, Issues and Revenues within their Offices and Charges, shall and may have Power and Authority from henceforth by Virtue of this Act to distrain for the same, and to use and order the same Distresses in such Sort and Form as any Officer or Officers of the King's Court of the Exchequer, for Levying and Lack of Payment of the King's Rents and Revenues answerable in the same Court heretofore have lawfully done, and may lawfully use to do, delivering to the Party distrained the Surplusage and Overplus of the Value of every such Distress, if any shall be, the King's Debts and Duties being first paid, and the Distrainant answered of reasonable Costs.

The King's Receivers, &c. may distrain for the Arrearage of Rent.

XII. And that the Head and Chief Officer or Officers of every of the King's Courts of Revenue, being of Record, or that shall be of Record, shall have full Power and Authority by Virtue of this Act, to set and assess reasonable Fines and Amerciaments upon any Sheriff or Sheriffs, for not returning, or misreturning, of any Writ to them directed and delivered out of any of the same Courts, touching or concerning the Levying or Answering of any of the said Issues, Rents or Revenues, or

Amercement of Sheriffs for not returning of Writs touching the levying of the King's Rents, &c.

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of any Debt due to our said Sovereign Lord the King, in such Sort, and after such Manner and Form as now is, or heretofore hath been lawfully used in the like and such other Cases, in the King's Highness Court of the Exchequer.

These Accomptants upon Warrant shall accompt and make ready Payment.

XIII. Be it also further enacted by the Authority aforesaid, That all Treasurers, and Chamberlains, and general Receivers of any of the King's Grace's Courts of Revenue for the Time being, and all Customers and Collectors of Customs, or certain and stalled Subsidies within any Port, Haven or Creek of this the King's Realm of *England*, that now be or hereafter shall be, within ten Days next after Notice to him or them given from the King, or six of his most honourable Privy Council, in Writing signed with their Hands, shall by themselves, or their sufficient Deputy or Deputies for whom they will answer, declare in Writing what Sums of Money, then being due unto our said Sovereign Lord the King, be at that Time in his or their Hands and Custody, and shall make ready and full Payment of all the said Sums of Money as then shall remain in his or their Hands or Custody, over and above the ordinary Payment and Sum of Money contained and expressed in sufficient Warrant or Warrants resting and remaining in his or their Office or Offices, and being in their full Force, Strength and Effect, and not lawfully countermanded nor revoked to their Knowledge, to the Use of our Sovereign Lord the King, at such Time and in such Sort as he or they shall be commanded and appointed by sufficient Warrant, upon Pain of Forfeiture of his or their Office or Offices.

Within a certain Time these Accomptants shall yearly accompt.

XIV. And be it further enacted by the Authority aforesaid, That the same Treasurers, Chamberlains and General Receivers, by themselves, or by their Deputy or Deputies for whom they will answer, shall yearly before the xx. Day of *June* make a perfect Accompt of all such Money or Treasure as hath come to their Hands to the King's Use, yearly, at or before the xx. Day of *March* then next before the said xx. Day of *June*, and shall make a perfect and whole Declaration in Writing of the Money remaining in every of their Hands to the King's Majesty, or to his Privy Council, yearly, before the last Day of *June* then next following, and make Payment of the same at such Time and in such Sort as he or they shall be commanded or appointed by sufficient Warrant, upon Pain of Forfeiture of his or their Office or Offices.

The Penalty of an Accomptant taking more than is lawful for the Payment of any Pension.

XV. And be it further enacted, That if any Treasurer, Receiver or Minister Accomptant, or their Deputy or Deputies, do take or receive of any Person or Persons any Sum or Sums of Money, or other Profit of and for the Payment of any Fees, Annuities, Pensions, Duties or Warrants, more or otherwise than he or they may lawfully do by former Laws and Statutes therein provided, That then the said Treasurer, Receiver and Minister so offending, shall forfeit and lose for every Penny or Pennyworth so to be taken or received, vj s. viij d. to the Party grieved, to be recovered in any of the King's Courts of Record, by Bill, Plaint or Action of

Debt, in which Suit no Wager of Law, Essoin or Protection shall be allowed.

No. 12. 7 Edward VI. c. 1.

XVI. And be it also enacted, That if any Auditor or Auditors, or his or their Deputy or Deputies, which ought to take the Accompt of any Treasurer, Chamberlain, Receiver or other Officer accomptable before him or them, do refuse or willingly protract and delay the taking of the same Accompt, in such wise as it cannot be finished within the Time or Times limited and appointed by this Act for the taking and finishing thereof, that then every Auditor so refusing or protracting and delaying, as is aforesaid, and being thereof duly and lawfully convict in the Court where the Revenue or Charge of the same Accompt is or shall be answerable to the King, shall incur, forfeit and lose such like Pain, Loss and Forfeiture, as the Treasurer, Chamberlain, Receiver or other Officer abovesaid, shall and ought to do by this Act, for not accompting of and for their Charges and Office and Offices: And thereby the same Treasurer, Chamberlain, Receiver and other Officer that should accompt, and shall be refused, or shall be protracted and delayed as is aforesaid, shall be discharged of any Pain, Loss or Forfeiture for not accompting as is abovesaid.

The Penalty if the Auditors refuse or delay to take an Accompt.

XVII. And be it further enacted, That the Duplicate or Copy of every Accompt that shall be made by any Treasurer or Receiver, or by their Deputy or Deputies, in Form aforesaid, within convenient Time after the finishing of the same Accompt, and at the reasonable Request and Costs of such Accomptant, shall be delivered to them or any of them, subscribed with the Hands of the Auditor or Auditors that shall take the same Accompt, or of his or their Deputy or Deputies for whom he or they will answer, upon Pain that the same Auditor or Auditors shall lose and forfeit to the King's Majesty ten Pound for every such Default.

The Copy of the Accompt shall be delivered to the Accomptant.

XVIII. Provided alway, and be it enacted by the Authority aforesaid, That this Act, nor any Thing therein contained shall in any wise extend to charge any Archbishops or Bishops of this Realm, or of any other the King's Majesty's Dominions, or any of them, at any Time hereafter to make any Manner of Bonds, or to make their Accompt and Payment of the Tenths arising and growing within any of their Dioceses, due or to be due to our said Sovereign Lord the King, otherwise or in any other Manner and Form than they or any of them heretofore have been charged, or accomptable and chargeable by the Laws and Statutes of this Realm; any Thing in this Act to the contrary notwithstanding.

Bishops Accompt and Payment of Tenths.

XIX. Provided always, That this Act, or any Thing therein contained, shall not extend to cause the Rents, Profits and Revenues, rising and growing to the King's Majesty within the Town or Marches of *Calice*, to be answered or paid otherwise, or at any other Days or Times, than heretofore hath been used and accustomed; any Thing in this Act to the contrary notwithstanding.

The Revenues of Calais.

No. 12.
7 Edward VI. c 1

Which Officers shall not be chargeable by this Statute.

XX Provided always, and be it enacted by the Authority aforesaid, That this Act, nor any Thing therein contained, shall in any wise extend to touch or charge any Sheriff, Escheator or Collector of any *Dismes*, *Quindismes*, benevolences, Contributions or Subsidies, (subsidies of Tonnage and Poundage only except), but that they and every of them shall and may do and exercise their said several Offices, and pay such Sums of Money as they or any of them be, or hereafter shall be, charged withal by their said several Offices, in such and like Sort, Manner and Form, as they and every of them have usually done, or should or ought to do, if this Act had never been had or made, this Act or any Thing therein contained to the contrary in any wise notwithstanding

No. 13.

13 Elizabeth, c 4 — An Act to make the Lands, Tenements, Goods and Chattels of Tellers, Receivers &c., liable to the Payment of their Debts

No 13.
13 Elizabeth c 4

Treasurers, Receivers and other Accountants' Lands shall be liable for the Payment of the Queen's Debts by them not paid, &c.

FOR the better Security of the Queen's Majesty, her Heirs and Successors, against such as shall have the Receipt and Charge of the Money and Treasure of her Highness, her Heirs and Successors, Be it declared and enacted by the Queen's Majesty, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all Lands, Tenements, Profits, Commodities and Hereditaments, which any Treasurer or Receiver in or belonging to any of the Queen's Majesty's Courts of the Exchequer, Wards and Liveries, or Duchy of *Lancaster*, Treasurer of the Chamber, Cofferer of the Household to the Queen's Majesty, her Heirs or Successors, Treasurer for the Wars, Treasurer of any Fort, Town or Castle, where any Garrison is or shall be kept, Treasurer of the Admiralty or Navy, Treasurer, Undertreasurer or other Person accomptable to the Queen's Majesty, her Heirs or Successors, for any Office or Charge of or within the Mint, Treasurer or Receiver of any Sums of Money imprest, or otherwise, for the Use of the Queen's Majesty, her Heirs or Successors, or for Provisions of Victual, or for Fortifications, Buildings or Works, or for any other Provisions to be used in any the Offices of the Queen's Majesty's Ordnance and Artillery, Armory, Wardrobe, Tents and Pavilions, or Revels, Customer, Collector, Farmer of Customs, Subsidies, Imposts or other Duties within any Port of the Realm, Collector of the Tenths of the Clergy, Collector of any Subsidy or Fifteen, Receiver General of the Revenues of any County or Counties, answerable in the Receipt of the Exchequer, or in the Court of Wards and Liveries, or the Duchy of *Lancaster*, Clerk of the Hamper, now hath, or at any Time hereafter shall have, within the Time whilst he or they or any of them shall

This Act extended to Under Collectors of Tenths, &c by 14 Eliz c 7

No 13.
13 Elizabeth, c. 4.

remain accountable; shall for the Payment and Satisfaction unto the Queen's Majesty, her Heirs and Successors, of his or their Arrearages, at any Time hereafter to be lawfully, according to the Laws of this Realm, adjudged and determined upon his or their Account (all his due and reasonable Petitions being allowed) be liable to the Payment thereof, and be put and had in Execution, for the Payment of such Arrearages or Debts to be so adjudged and determined upon any such Treasurer, Receiver, Teller, Customer, Collector, Farmer, Officer or Accomptant, as is before-named, in like and in as large and beneficial Manner to all Intents and Purposes, as if the same Treasurer, Receiver, Teller, Customer, Farmer or Collector, upon whom any such Arrearages or Debts shall be so adjudged or determined, had the Day he became first Officer or Accomptant stood bound by Writing obligatory, having the Effect of a Statute of the Staple to her Majesty, her Heirs or Successors, for the true Answering and Payment of the same Arrearages or Debts.

Certain Cases where the Queen may sell the Accountant's Lands.

'II. And forasmuch as many Times it may come to pass 'that the Queen's Highness, her Heirs or Successors, shall 'not or may not be conveniently satisfied of the Debt to be 'determined or due upon any Account or Farm as is aforesaid, 'by way of Extent, for that the yearly Value of the Lands ex'tended will not satisfy her Highness, her Heirs or Successors, 'within the Compass of many Years, so as thereby great Loss 'might ensue to her Highness, her Heirs and Successors,' For Remedy thereof be it further enacted, That if any Treasurer, Receiver, Collector, Farmer, Customer, Teller, Collector of Custom, Subsidy or Impost, or other Person Accountant before mentioned, which shall from and after the Feast of St *Michael* the Archangel now next coming receive or be chargeable with any Money or Treasure of our said Sovereign Lady the Queen, her Heirs or Successors, and shall upon the Determining of his or their Account (all his and their due Petitions to them upon the same Account being allowed) or by reason of any Farm, as aforesaid, be found in Arrearages, or to owe unto our said Sovereign Lady the Queen, her Heirs or Successors, any Sum or Sums of Money, and shall not within the Space of six Months next after his or their Accounts finished, or Debt known, (having Allowance of his or their due and reasonable Petitions, as is aforesaid) truly satisfy and pay all such Arrearages and Sums of Money as he or they shall owe upon Determination of his or their Account, or upon his or their Debt known, as is aforesaid; that then it shall and may be lawful to the Queen's Highness, her Heirs and Successors, at any Time, and from Time to Time, after the said six Months ended, to make Sale by her or their Letters Patents under the Great Seal of *England*, of so much of the Lands, Tenements and Hereditaments of every such Accountant or Debtor so being found in Arrearages or in Debt as is abovementioned, as may suffice our said Sovereign Lady the Queen, her Heirs or Successors, for the Satisfaction of his or their Debt

Such Sale good after the Death of such Accountant, &c.

No. 13.
13 Elizabeth, c. 4.

or Arrearages, to be determined or adjudged upon his or their Account or Farm, as is aforesaid, (all due Petitions being allowed, as is aforesaid) until her Majesty, her Heirs or Successors, be by such Sale fully satisfied and paid off such Arrearages and Debt to be found upon Account or Farm, as is aforesaid.

Delivery of the Overplus to the Owner of the Land.

III. And if any Overplus of Money shall be received or had upon any such Sale, then the same shall be paid and delivered to the Accountant or Farmer, or his Heirs, by the Officer that shall receive the Money upon any of the said Sales, without any further or other Warrant in that Behalf to be made or obtained.

The Sale good against * *the Queen and Accountant.*

* Read, *against the Party Accountant.*

IV. And be it further enacted by the Authority aforesaid, That all the said Sales to be made by the Queen's Majesty, her Heirs or Successors, as is aforesaid, shall be good and available in Law against the Party Accountant indebted as is aforesaid, and his Heirs claiming as Heirs, and against the Queen's Majesty, her Heirs and Successors, notwithstanding any former Charge or Incumbrance to her Majesty, her Heirs and Successors, by the Person or Persons for whose Debt or Duty the same shall fortune to be sold.

Accountant purchaseth Lands in others' Names.

V. And be it further enacted by the Authority aforesaid, That if any Person or Persons accountant or indebted, as is aforesaid, shall at any Time after he or they shall become accountant or chargeable, as is aforesaid, purchase and buy, or cause to be purchased and bought, any Lands, Tenements or Hereditaments, and cause the Assurance thereof to be made in the Name of any other Person or Persons, where the same is indeed meant or intended to the Use, Profit or Behoof of such Person accountant or indebted, or of any other Person or Persons, and that the same Manner of Purchasing, and secret Uses, Profits or Behoof, shall be found by Office or Inquisition; That then all and every Lands, Tenements and Hereditaments so to be bought or purchased, or caused to be purchased (as is before-mentioned in this last Proviso) shall by Virtue of this Act be taken, deemed and used for the Satisfaction of the Arrearages and Debt of every such Accountant or Debtor, as is above-mentioned, to all Intents and Purposes, as though the Person or Persons indebted upon his or their Account or Farm were thereof actually seized of such Estate that was conveyed to any Person or Persons, by any such Accountant or Debtor, or by his Means, as is aforesaid: And that all Sales to be thereof made by the Queen's Majesty, her Heirs or Successors, for Satisfaction of such Debt or Arrearages as shall be found, as is aforesaid, to be due and owing to our said Sovereign Lady the Queen, her Heirs and Successors, shall be of the like Effect, and be used and done in such like Manner and Form, as is before expressed.

'VI. And whereas heretofore some Treasurers, Tellers, 'Receivers, Collectors and others, having had Charge of the 'Queen's Majesty's Money and Treasure, have gotten into 'their Hands great Sums of the Queen's Majesty's Money and

'Treasure sithence the Beginning of her Majesty's Reign, 'and have most fraudulently employed her Majesty's Money 'and Treasure which they had in their Charge, in sundry wise 'to their own Uses, partly in the Purchasing her Majesty's 'own Lands, and partly in purchasing Lands of others: And to the Intent the same should not be liable to satisfy and pay 'her Majesty, her Heirs or Successors, of that which to her 'or them should appertain, have purchased the same some-'times in their own Names, and sometimes in the Names of 'sundry their Friends and Kinsfolks, Wives or Children, and 'yet nevertheless have taken and received the Rents and 'Revenues thereof to their own Uses.'

No. 13. 13 Elizabeth, c. 4.

VII. Be it therefore further enacted and ordained by the Authority aforesaid, That all and singular Lands, Tenements and Hereditaments, which any Treasurer, Receiver, Teller, Customer, Collector, Officer or Accountant before-named, hath heretofore since the Beginning of the Queen's Majesty's Reign purchased or caused to be purchased, to the Intent the same should not be liable, as is aforesaid (the Fraud and Covin aforesaid being first found by Office or Inquisition) shall and may be seized and taken by her Majesty, her Heirs and Successors, and retained by her Majesty, her Heirs and Successors, in Fee-simple, to be sold or otherwise used at her and their Wills and Pleasures, towards the Payment and Satisfaction of all and every Arrearages already set or determined and adjudged, or that hereafter shall be set, determined or adjudged, upon his or their Account (all reasonable and due Petitions being allowed) at such Rate and Value as the same were purchased or bought, or caused to be purchased or bought, by any such Treasurer, Receiver, Teller, Customer or Collector before-named, or by any other Person to their Use.

Lands purchased by Accountants since the Beginning of the Queen's Reign.

VIII. Provided always, That if the Lands and Tenements so to be seized, taken or sold, by her Majesty, her Heirs or Successors, as is last above-mentioned, do surmount, after the Rate and Value aforesaid, the Debt and Arrearages to be set, determined and adjudged upon the Account of any Treasurer, Receiver, Teller, Customer, Collector or Accomptant before-named, that then her Majesty, her Heirs and Successors, shall take and seize only so much as shall amount, after the Rate and Value aforesaid, to the just Payment and Satisfaction of such Debt and Arrearages as hath been or shall be set, determined or adjudged upon his or their Account as is aforesaid.

The Queen shall seize only so much Lands as will satisfy her.

IX. Provided always, and be it further enacted by the Authority aforesaid, That no Bishop having the Collection of any Subsidy or Tenths, or any his Lands, Tenements or Hereditaments, whereof he is seized in the Right of his Bishoprick, shall be charged by Virtue of this Act for any Arrearages of Tenths or Subsidy, otherwise or in any other Manner than he might lawfully have been before the Making of this Act; any Thing herein contained to the contrary thereof notwithstanding.

No Bishop's Lands shall be chargeable.

X. And be it also further provided and enacted by the Authority aforesaid, That this Act, or any Thing therein con-

Accountant whose Receipt

No 13. 13 Elizabeth, c 4

exceedeth not l.

tained, shall not in any wise extend to charge any Treasurer, Receiver, Teller, Customer, Collector or Accomptant aforesaid, having any yearly Receipt, nor any their Lands, Tenements or Hereditaments, whose yearly Receipt, Collection and Charge, or whose whole Receipt from the Beginning of his Charge, is not or hath not been, or hereafter shall not be, above the Sum of three hundred Pounds, otherwise or in any other Manner and Form than he or they might lawfully have been charged before the Making of this Act, any Thing herein contained to the contrary thereof notwithstanding

'XI And forasmuch as sundry the Accountants before-'named, namely, The Treasurer of the Chamber, and Cof-'ferer of the Houshold, of our said Sovereign Lady, the 'Queen, her Heirs and Successors, Treasurers of Wars or 'Garrisons, Treasurers of the Navy, Treasurers or Receivers 'of any Sums of Money for Provision of Victual, or for Forti-'fications, or for Buildings and Master of the Wardrobe, are 'by Order of their Offices and Charge, after their Accounts 'ended and determined, to disburse, expend and defray the 'Debt remaining upon their Accounts, in such Charge as are 'necessarily and incidentally to be spent and provided in their 'Offices and Charges, so as they are not of such Sums of Money 'or Debt remaining upon their Account to make present Pay-'ment and Satisfaction as other Accountants are'

Accountants which are not to make present Payment.

XII. Be it therefore enacted and ordained by the Authority aforesaid, That this Act or any Thing therein contained shall not extend to give any Power or Authority to make Sale of any Lands, Tenements or Hereditaments, for any such Debt to be set and adjudged in any of his or their Accounts mentioned in this Branch, unless the Queen's Majesty, her Heirs and Successors, upon the Ending or Determining of his or their Accounts (all his or their due Petitions to them upon the same Accounts being allowed) require or command present Payment thereof, or otherwise eftsoons require a new Account of the same Debt so set or remaining in any the Accounts mentioned in this Branch; and that then the same Debt, or any Part thereof, shall be found to be owing and unexpended in the Matters or Charge pertaining to any of their said Offices or Charges mentioned in this Branch, and the same Debt remain unpaid by the Space of six Months after such Request or Commandment.

This Act shall not charge any Sheriff, Escheator, or Bailiff of Liberties.

XIII. Provided alway, That this Act shall not extend to charge any Sheriff, Escheator or Bailiff of Liberties, or the Lands, Tenements or Hereditaments of any Sheriff, Escheator or Bailiff of Liberties, nor of any their Heirs or Assigns, for any Thing touching his or their Office of Sheriffwick, Escheatorship, or Bailiffwick, nor for any Money by him or them received or to be received by reason of any their said Offices, otherwise or in any other Manner than he or they might lawfully have been charged before the making of this Act; any Thing herein contained to the contrary notwithstanding

XIV. Provided also, That this Act, as touching only the Sale of any Lands or Tenements, shall not extend to any

Lands, Tenements or Hereditaments,* which any Person or Persons now have or enjoy, and have purchased or obtained *bona fide*, and not being privy or consenting unto any such Intent to defraud the Queen's Majesty, as is abovesaid. And that it shall be lawful to every Person and Persons whose Lands, Tenements or Hereditaments, shall by any Office or Inquisition be found to be fraudulently conveyed or assured, as is abovesaid, to have his or their lawful Traverse to every such Office or Inquisition; and if it be found with the Party that tendreth the Traverse, that then he shall have the said Lands out of the Prince's Hands without any Petition, Livery or *Ouster le main*, or any other Suit to be had, made or used; and the same being found for such Person or Persons so traversing, the same Lands, Tenements and Hereditaments, shall be adjudged as not liable, chargeable, nor to be sold by Force of this Statute.

No. 13. 13 Elizabeth, c. 4. Lands purchased bona fide.

Any Party grieved may have a Traverse.

XV. Provided also, and be it enacted, That if the Queen's Majesty, her Heirs or Successors, shall by any Sale of Lands by Force of this Statute be fully satisfied of the Debt or Arrearages of any such Accountant or Debtor, or any Part thereof, then the Sureties of such Accountant or Debtor shall be discharged of so much of the said Debt, Forfeiture and Arrearages, as so shall be satisfied, and for the Residue only shall be ratably according to their Abilities charged; any Thing in this or any other Statute to the contrary notwithstanding.

If the Queen do sell the Accountant's Lands, his Sureties shall be discharged for so much.

XVI. Provided always, That this Act, nor any Thing therein contained, shall in any wise extend to charge *Henry Golding*, Esq.; and *Thomas Neale*, one of the Queen's Majesty's Auditors, or the Lands or Tenements of either of them, to whom the Queen's Majesty hath demised any Customs, Subsidies or Imposts, in any Thing only touching the said Demise and Lease, otherwise or in any other Manner than they might have been lawfully charged if this Act had never been had or made, except they or either of them do hereafter take any of the Profits of the said Subsidies, Customs or Imposts by Force of the said Demise; any Thing herein contained to the contrary thereof notwithstanding.

Certain Persons not chargeable by this Act.

No. 14.

27 Elizabeth, c. 3.—An Act for the Explanation of an Act made in the thirteenth Year of the Queen's Majesty's Reign, intituled "An Act to make the Lands, Tenements, Goods and Chattels of Tellers, Receivers, &c. liable to the Payment of their Debts."

'WHERE in the Parliament holden at *Westminster* the 'second Day of *April* in the thirteenth Year of the Reign 'of our Sovereign Lady Queen *Elizabeth*, there was amongst 'other Things an Act made, intituled, "An Act to make the 'Lands, Tenements, Goods and Chattels of Tellers, Receiv-

No. 14. 27 Elizabeth, c. 3.

No. 14. 27 Elizabeth, c. 3

A Question arising upon the Exposition of the Statute of 13 El. c. 4.

'ers, &c., liable to pay their Debts;" upon which Act some 'Doubt and Question hath been moved, whether the Queen's 'Highness, her Heirs and Successors, might for the Satisfaction of her and their Debts and Farms, by her or their Letters 'Patents under the Great Seal of *England*, make Sale of any 'the Lands, Tenements, and Hereditaments, whereof her 'Highness, her Heirs and Successors, have Power or Authority to make Sale by Virtue of the same Act, after the Death 'of such Accountant or Debtor as is mentioned in the said Act, 'or where the Account of such Accountant or Debtor was not 'or is not made, or his or their Debt known in the Life-time 'of the same Accountant or Debtor:'

Sale of the Accountant's Lands after his Death.

II. For Declaration and Explaining whereof, be it declared and enacted by the Authority of this present Parliament, That the said Act, in every Part thereof, touching the Power given by that recited Act unto her Highness, her Heirs and Successors, to make Sale of any the Lands, Tenements, or Hereditaments, by the same Act limited to be sold, is, shall and ought to be expounded and intended, as well in case where the Sale is to be made after the Death of such Accountant or Debtor, as where it is to be made in his or their Life-time; and also as well in case where the Account is made, or the Debt known within eight Years after the Death of such Accountant or Debtor, as where the same Account is made, or the Debt known in the Life-time of the same Accountant or Debtor; any Ambiguity or Question that hath risen or grown, or may arise, grow or be conceived, upon the Letter of the same Act to the contrary thereof in any wise notwithstanding.

The Accountant's Debt known within eight Years after his Death.

Process against the Accountant's Heir before the Sale of his Lands.

III Provided always, and be it enacted by the Authority aforesaid, That after the Death of such Accountant and Debtor, as is mentioned in the said recited Act, and before such Time as any the Lands, Tenements and Hereditaments descended unto the Heir of such Accountant or Debtor as Heir unto the same Accountant or Debtor, shall be sold as aforesaid, a *Scire facias* shall be awarded out of her Majesty's Court of Exchequer unto the Sheriff of the County where any such Lands do lie, to garnish the same Heir to shew Cause why the same Lands, Tenements and Hereditaments so to him descended as aforesaid, should not be put to Sale for Satisfaction of the same Debts or Farms in the same Act mentioned, according to the Tenour of the said Act; whereupon if the Heir do not within a convenient Time upon a Garnishment or two *Nichils* return[ed] shew and prove unto the said Court, that the Executors or [Ad]ministrators of [s]uch Accountant or Debtor have sufficient, [w]hich ought to answer or be liable for the same Debt or Farm, and whereby the said Debt or Farm shall and may be duly and fully satisfied; That then after ten Months next after such two *Nichils*, or Garnishment returned, the same Lands, Tenements and Hereditaments shall be sold by her Majesty, her Heirs or Successors, and the Money thereof coming disposed

according to the true Intent and Meaning of the said former recited Act.

The Heir's Sale good to him who is not consenting to defraud the Queen.

IV. And be it further enacted by the Authority aforesaid, That the said recited Act, and this Statute of Explanation also, as touching only the Sale of any Lands, Tenements or Hereditaments, to be made after the Death of such Accountant or Debtor as is aforesaid, shall not extend to any Lands, Tenements or Hereditaments, which any Person or Persons not being privy or consenting unto any such Intent to defraud the Queen's Majesty, her Heirs or Successors, as in the said recited Act is mentioned, now have or enjoy, or have purchased or obtained, or before any *Scire facias* so to be awarded as aforesaid, shall have or enjoy, purchase or obtain *bona fide* and upon good Consideration; any Thing in this Act, or in the before-mentioned Act to the contrary thereof in any wise notwithstanding.

To what Accountants this Statute of Explanation shall extend.

V. Provided always, and be it enacted, That this Act of Explanation shall extend only unto such as have been or shall be Tellers, Receivers, Treasurers, Customers, Cofferers of the Household, Farmers of Impost, Collectors, Bailiffs, Victuallers, and other Officers of Receipts and Accounts unto our Sovereign Lady the Queen's Majesty, her Heirs and Successors, and to every of them, their Heirs, Executors and Administrators, and to no other.

Process against the Heir where the Debt groweth in the Court of Wards or Duchy.

VI. Provided also, and be it further enacted by the Authority aforesaid, That in such Cases where any Account shall or ought to be made, or any Debts shall be owing in the Courts of the Duchy of *Lancaster*, and Wards and Liveries, or in any of them, then after the Death of such Accountant or Debtor as is mentioned in the said former Act, in any of the said last mentioned Courts, and before such Time as any of the Lands, Tenements or Hereditaments, descended unto the Heir of such Accountant or Debtor as Heir unto the same Accountant or Debtor, shall be sold as aforesaid, such Process shall be awarded as hereafter is expressed; that is to wit, first a Privy Seal, commanding the same Heir to make personal Appearance in the Court out of which the same Privy Seal shall be awarded to shew Cause, as in the Writ of *Scire facias* to be awarded out of the Exchequer is before appointed: And if the same Heir shall make Default at the Day of the Return of the same Privy Seal, That then upon the Affidavit made, that the same Privy Seal was duly served, either upon the Person of the same Heir, or left at the Place of his or her Dwelling or most usual Abode, an Attachment with Proclamation shall be awarded against the same Heir, and shall be openly published and proclaimed in some Market-Town in the County where the same Heir was last dwelling, or made his or her usual Abode, upon some Market-day there in the Time of open Market, twenty Days at the least before the Return thereof: And if upon Return thereof the said Heir shall eftsoons make Default, that then all Things shall be done and executed for the Sale of the same Lands, Tenements and Hereditaments,

No. 14.
27 Elizabeth, c. 3.

and for the full Satisfaction of the same Debt or Farm, in like and as large and ample Manner and Form, to all Intents and Purposes, as before in this Act is limited and appointed in Cases where Default is made upon a Garnishment or two *Nichils* returned upon a *Scire facias* awarded out of the said Court of Exchequer.

No Sale of the Heir's Lands during his Minority.

VII. Provided also, and be it likewise enacted, That if the Heir of any Accountant or Debtor before-mentioned shall happen to be within the Age of one and twenty Years when any such Process shall fortune to be awarded, that then during the Time of his or her Non-age, this Act or any Thing therein contained shall not in any wise be extended, executed or put in Ure, as touching or concerning only the Selling of the Lands, Tenements or Hereditaments of any such Heir; any Thing in the same Act contained to the contrary in any wise notwithstanding: And yet nevertheless, after such Time as any such Heir shall accomplish the full Age of twenty-one Years, all and singular the Lands, Tenements and Hereditaments descended unto the same Heir from any such Debtor or Accountant as aforesaid, shall at all Times during the Space of eight Years then next ensuing, be subject and liable to be sold for the Payment and Satisfaction of her Majesty, her Heirs and Successors, according to the Intent and true Meaning of this Act, in such Manner and Form to all Intents and Purposes, as if the same Heir had been of full Age at the Time of the Death of such Debtor or Accountant.

The Heir's Lands liable to Sale eight Years after he shall accomplish his full Age.

No Sale of Lands where the Accountant hath a Quietus est.

VIII. Provided always, and be it enacted, That this Act, or any Thing therein contained, shall not extend to the Sale of the Lands, Tenements or Hereditaments of any such Heir or Heirs, for or by reason of any Account, Debt or Farm, whereof any such Debtor or Accountant have or shall have a *Quietus est*, or Discharge in his or their Life-time. 39 El. c. 7. revived by 1 Jac. 1. c. 25. § 31.

No. 15.

7 James I. c. 15.—An Act concerning some Manner of Assignment of Debts to his Majesty.

No. 15.
7 James I. c. 15.
What Debts only may be assigned to the King.

'WHEREAS it is conceived that some Manner of Assignments of Debts, if they should be made to his Majesty, his Heirs and Successors, the same would be inconvenient:' His Majesty therefore is well pleased that it be enacted, and be it enacted by Authority of this present Parliament, That no Debt shall at any Time after the first Day of [illegible] which shall be in the Year of our Lord God one thousand [illegible] hundred and ten, be assigned to the King's Majesty, his Heirs and Successors, by or from any Debtor or Accountant to his Majesty, his Heirs or Successors, other than such Debts as did before grow due originally to the King's Debtor or Accountant *bona fide*: and that all Grants and Assignments of

Debts to the King's Majesty, his Heirs or Successors, which from and after the said First Day of *July* shall be had or made contrary to the true Intent of this Act, shall be void and of no Force; any Law, Custom, Privilege, or Thing, to the contrary in any wise notwithstanding.

No. 15
7 James I. c. 15.

No. 16.

22 and 23 Charles II. c. 22.—An Act for the better and more certain Recovery of Fines and Forfeitures due to his Majesty.

No. 16
22 and 23 Charles II. c. 22.

'WHEREAS by divers Statutes in old Time made, it was 'provided, That the Estreats of Fines, Issues, Amerciaments and other Forfeitures should be certified and delivered into the Exchequer yearly, and that from thence the 'Estreats of the Summons should go forth through all Shires 'for the Levying thereof: Since the Making of which Laws 'many are the Abuses and Mischiefs arisen and practised, 'not only by the not timely certifying and estreating the said 'Fines and Forfeitures, but also by the sinister Practice 'amongst Officers, in sparing, discharging and not certifying 'at all, or if they do certify, yet by Mis-certifying and Estreating the said Fines and Forfeitures in and into the said 'Court of Exchequer:'

All Fines, Post-fines, Issues, Amerciaments, Recognizances, and other Forfeitures forfeited in the King's Bench, or Common Bench, to be certified twice every Year into the Exchequer.

II For Remedy whereof, and Mischief of the like Kind, Be it enacted and ordained by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from henceforth all Fines, Post-fines, Issues, Amerciaments forfeited, Recognizances, Sum and Sums of Money paid or to be paid in lieu or satisfaction of them or any of them, and all other Forfeitures whatsoever, which already are or hereafter shall be set, imposed, lost or forfeited, in his Majesty's Courts of King's Bench, Common Bench or Exchequer, shall be certified and estreated in and into the said Court of Exchequer, twice in every Year yearly (that is to say) All Fines, Post-fines, Issues, Amerciaments forfeited, Recognizances, Sum and Sums of Money paid or to be paid in lieu or satisfaction of them or any of them, and all other Forfeitures whatsoever arising in any of the said Courts, from the Beginning of every *Hillary* Term in every Year to the Beginning of every *Trinity* Term in every Year, shall be and are hereby ordained to be certified and estreated in and into the said Court of Exchequer, the last Day of every *Trinity* Term in every Year.

Hillary Term

Trinity Term

III. And all Fines, Post-Fines, Issues, Amerciaments forfeited, Recognizances, Sum and Sums of Money paid and to be paid in lieu or satisfaction of them or any of them, and all other Forfeitures whatsoever arising in any of the said Courts, from the Beginning of every *Trinity* Term in every Year to

No. 16. 22 and 23 Charles II. c. 22.

the Beginning of every *Hillary* Term in every Year, shall be in like manner certified and estreated in and into the said Court of Exchequer, the said last Day of every *Hillary* Term in every Year; on pain that every Officer and Minister of or belonging to the said Courts or any of them, to whom it doth, ought or shall belong or appertain, to make Certificate or Estreat of any of the said Fines or Forfeitures, making default or offending therein, to forfeit and pay fifty Pounds for every such Default or Failure that shall be made in Certifying and Estreating as aforesaid; the one Moiety to the Use of his Majesty, his Heirs and Successors, and the other Moiety to such Person or Persons that shall or will sue for the Same in any Court of Record by Action of Debt, Bill or Information, wherein no Wager of Law, Essoin or Protection shall be allowed.

The Penalty.

A Saving out of this Act.

IV. Provided always, That nothing in this Act contained shall alter or change the Course now used in the Certifying and Estreating of Issues from the said Court of Common Bench, nor of Fines *Pro licentia concordandi*, commonly called Post-Fines, being termly certified and estreated into the said Court of Exchequer, nor the termly estreating of Issues certified out of the Office of Pleas belonging to the said Court of Exchequer, to the Clerk of the Estreats there.

All Fines and Forfeitures, &c. before Judges of Assize, Clerks of the Market, or Commissioners of Sewers, to be in like manner certified.

V. And be it further enacted and ordained by the Authority aforesaid, That all Fines, Issues, Amerciaments forfeited, Recognizances, Sum and Sums of Money paid or to be paid in lieu or satisfaction of them or any of them, and all other Forfeitures whatsoever, which already are or hereafter shall be set, imposed, lost or forfeited, by or before any Judge or Judges of Assize, Clerk of the Market or Commissioners of Sewers throughout the Kingdom of *England*, shall be and are hereby ordained to be certified and estreated into the said Court of Exchequer twice in every Year yearly, (that is to say) All Fines, Issues, Amerciaments forfeited, Recognizances, Sum and Sums of Money paid or to be paid in lieu or satisfaction of them or any of them, arising or happening in any of the said Courts last mentioned, or before any Judge or Judges of the same, from the Feast of St. *Michael* the Archangel in every Year, to the Feast of *Easter* in every Year, shall be certified and estreated in and into the said Court of Exchequer, before the first Day of *Trinity* Term in every Year.

The Time when.

VI. And all Fines, Issues, Amerciaments forfeited, Recognizances, Sum and Sums of Money paid or to be paid in lieu or satisfaction of them or any of them, arising or happening in any of the said Courts last mentioned, from the said Feast of *Easter* in every Year to the said Feast of St. *Michael* the Archangel in every Year, shall be certified and estreated into the said Court of Exchequer before the first Day of *Hillary* Term in every Year; on pain that every such Person and Persons to whom it doth, ought or shall belong or appertain to make Certificate or Estreats of the said Fines or Forfeitures, making default herein, to forfeit and pay fifty Pounds for every

Forfeiture.

such Default or Failure that shall be made in Certifying and Estreating as aforesaid; the one Moiety to the Use of his Majesty, his Heirs and Successors, and the other Moiety to such Person or Persons that shall or will sue for the same in any Court of Record by Action of Debt, Bill or Information, wherein no Wager of Law, Essoin or Protection shall be allowed.

No. 16. 22 and 23 Charles II. c. 22.

VII. And be it further enacted and ordained by the Authority aforesaid, That all and every the Clerk and Clerks of the Peace, and all Town-Clerks and every of them within the Kingdom of *England*, do and shall make and deliver to the Sheriff or Sheriffs of the County, City or Town Corporate, where the Sessions of the Peace is or shall be kept, within twenty Days after the nine and twentieth Day of *September* in every Year yearly, a true or perfect Estreat or Schedule of all Fines, Issues, Amerciaments forfeited, Recognizances, Sum and Sums of Money and other Forfeitures whatsoever, that are or shall happen to be imposed, set, lost or forfeited in any of the said Sessions of the Peace respectively, which shall be held before *Michaelmas*, by or upon any Person or Persons whatsoever, due to his Majesty;

All Clerks of the Peace, and Town-clerks, to deliver to the Sheriff a Schedule of all Fines, &c.

VIII. And also do and shall yearly in every Year, on or before the second Monday after the Morrow of *All Souls*, make and deliver into the said Court of Exchequer, a true and perfect Duplicate, Certificate and Estreat of all such Estreats and Schedules so delivered to the respective Sheriffs as aforesaid, That so the respective Sheriffs on their Apposals in the said Court of Exchequer, may be charged with the Monies levied and received by him or them respectively, upon such Schedules delivered as aforesaid; on pain that every such Person and Persons offending herein, for every such Default or Failure made, to forfeit and pay fifty Pounds; the one Moiety to the Use of his Majesty, his Heirs and Successors, and the other Moiety to such Person or Persons that shall or will sue for the same, to be recovered in any Court of Record, by Action of Debt, Bill or Information, wherein no Essoin, Protection or Wager of Law shall be allowed.

And return a Duplicate into the Exchequer.

The Penalty.

IX. And be it further enacted and ordained by the Authority aforesaid, That no Officer or Minister of or belonging to any of his Majesty's Courts of King's Bench, Common Bench or Exchequer, nor any Clerk of Assize, Clerk of the Peace, Town-Clerk, nor any Officer or Minister under them, or any of them, nor other Person or Persons whatsoever, do or shall spare, take off, discharge, or wittingly or willingly conceal any Indictment, Fine, Post-Fine, Issue, Amerciament forfeited, Recognizance or other Forfeiture whatsoever, exhibited, set, imposed, lost or forfeited, or to be exhibited, set, imposed, lost or forfeited in any of the said Courts beforementioned, or before any Judge or Judges of or belonging to the same, or any Sum or Sums of Money paid or to be paid to any Officer or Officers in lieu or satisfaction of any Fine or Forfeiture, unless it be by Rule or Order in Court where such

All Persons whatsoever shall not withhold, but estreat all Fines, &c. into the Exchequer.

No. 16. 22 and 23 Charles II. c. 22.

Indictment, Fine, Post-Fine, Issue, Amerciament forfeited, Recognizance or other Forfeiture, is or shall be exhibited, set, imposed, lost or forfeited; nor shall any of the said Officers or Ministers aforesaid, or any of them, or any other, wittingly or willingly miscertify or estreat in or into the said Court of Exchequer, any Fine, Post-Fine, Issue, Amerciament forfeited, Recognizance or other Forfeiture whatsoever, whereby the Process of the said Court of Exchequer for the levying of the same may be made invalid and of none Effect; but every such Officer and Officers, and all and every other Person and Persons offending herein, shall for every such Offence forfeit and pay treble the Value of such Fine, Post-Fine, Issue, Amerciament forfeited, Recognizance, Sum and Sums of Money, and other Forfeiture so spared, taken off, discharged, concealed, not certified, or estreated, or miscertified or estreated as aforesaid; the one Moiety thereof to the Use and Behoof of his Majesty, his Heirs and Successors, and the other Moiety to such Person or Persons as shall or will sue for the same in any Court of Record, by Action of Debt, Bill or Information, wherein no Wager of Law, Essoin or Protection shall be allowed; and also shall lose his and their Office and Place, and be for ever incapable to be imployed in any Office or Place where any Part of his Majesty's Revenue is to be managed or paid.

Upon all Certificates and Estreats, the Greenwax shall go forth for the Levying of the same.

X. And lastly, Be it enacted and ordained by the Authority aforesaid, That where any Fine or Fines, Sum or Sums of Money, or other Forfeitures due to his Majesty, his Heirs or Successors, shall from henceforth at any Time or Times be paid to any Sheriff, Clerk of Assize, Clerk of the Peace, or other Officer or Minister whatsoever belonging to any Court or Courts, and be according to the Intent and Directions of this Act certified and estreated in or into the said Court of Exchequer; there and in such case the Summons or Process of the Green-Wax shall go forth and be awarded to the respective Sheriffs against such Officer and Officers, and other Persons to whom such Fine or Fines, Sum or Sums of Money, or other Forfeiture is or shall be so paid, for the levying and receiving of the same, that so it may appear when, to whom, and how such Monies are received, answered and paid to his Majesty, his Heirs and Successors; any Custom or Usage to the contrary notwithstanding.

A Saving of all Rights and Liberties.

XI. Provided always, and be it enacted by the Authority aforesaid, That nothing in this Act contained shall in any sort extend, or be construed to extend, to the prejudicing of the Rights and Privileges of any Bodies Politick or Corporate or their Successors, or of any Lord or Lords of any Manor, Liberty, or Franchise whatsoever; any Thing herein to the contrary thereof in any wise notwithstanding.

A Saving to the City of London.

XII. Provided always, and be it enacted by the Authority aforesaid, That nothing in this Act contained shall extend to or be any ways prejudicial to the Rights, Customs, Privileges, Liberties, Charter or Charters of the City of *London*;

but that the said City may enjoy the same accordingly, as they formerly have enjoyed the same, in all Respects, and to all Intents and Purposes whatsoever, in the same Manner and Form as they before this Act had enjoyed the same; any Thing herein contained to the contrary thereof in any wise notwithstanding.

No. 16. 22 and 23 Charles II. c. 22.

XIII. And be it further enacted by the Authority aforesaid, That this Act shall continue for three Years, and from thence until the End of the next Session of Parliament, and no longer. [Made perpetual by 4 & 5 W. & M. c. 24. sec. 1.]

How long to continue.

No. 17.

25 George III. c. 35.—An Act for the more easy and effectual Sale of Lands, Tenements, and Hereditaments of Crown Debtors, or of their Sureties.

No. 17. 25 George III c. 35

13 Eliz. c. 4.

'WHEREAS by an Act, made in the thirteenth Year of 'the Reign of Queen *Elizabeth* (intituled, "An Act to make the Lands, Tenements, Goods and Chattels, of Tellers, Receivers, *etcetera*, liable to the Payment of their 'Debts"), for the better Security of the Queen's Majesty, her 'Heirs and Successors, against such as should have the Receipt 'and Charge of the Money and Treasure of her Highness, her 'Heirs and Successors, it was declared and enacted, That all 'Lands, Tenements, Profits, Commodities, and Hereditaments, 'which certain Officers of the Crown, Farmers, and Persons 'therein named, particularly the Treasurer or Receiver of any 'Sums of Money impressed, or otherwise, for the Use of the 'Queen's Majesty, her Heirs or Successors, then had, or 'at any Time thereafter should have, within the Time he or 'they, or any of them, should remain accountable: should, for 'Payment and Satisfaction unto the Queen's Majesty, her 'Heirs and Successors, of his or their Arrearages, at any Time 'thereafter to be lawfully, according to the Laws of the 'Realm, adjudged and determined upon his or their Account '(all his due and reasonable Petitions being allowed) be liable 'to the Payment thereof, and be put in Execution for Payment 'of such Arrearages or Debts, in like and in as large and beneficial a Manner, as if the Person had, the Day he became 'Officer or Accountant, stood bound by Writing obligatory, 'having the Effect of a Statute of the Staple, to her Majesty, 'her Heirs or Successors; and reciting, that forasmuch as 'many Times it might come to pass, that the Queen's Highness, 'her Heirs or Successors, might not be conveniently satisfied 'of the Debt to be determined or due upon any Account as 'aforesaid, by way of Extent, for that the yearly Value of the 'Lands extended would not satisfy her Highness, her Heirs 'or Successors, within the Compass of many Years, so as that 'great Loss might ensue to her Highness, her Heirs and Successors; for Remedy thereof it was enacted, That if any Trea-

No. 17.
25 George III c. 35.

'surer, or other Person Accountant before mentioned, which 'should, from and after the Feast of *Saint Michael* then next 'ensuing, receive or be chargeable with any Money or Trea-'sure of the Queen, her Heirs or Successors, and should, upon 'the determining of his or their Account, or by reason of any 'Farm as aforesaid, be found in Arrearages, and should not, 'within six Months next after his or their Accounts finished, 'or Debt known, pay all such Sums of Money as he or they 'should, upon Determination of his or their Account, or upon 'his or their Debt known, it should be lawful to the Queen's 'Highness, her Heirs and Successors, at any Time, and from 'Time to Time, after the said six Months ended, to make Sale, 'by her or their Letters under the Great Seal of *England*, of 'so much of the Lands, Tenements, and Hereditaments, of 'every such Accountant or Debtor, so being found in Arrear-'ages or Debt, as might suffice the Queen, her Heirs or Suc-'cessors, for Satisfaction, until her Majesty, her Heirs or Suc-'cessors, should be by such Sale fully satisfied and paid off such 'Arrearages and Debt; and that if any Overplus should be 'received upon any such Sale, then the same should be paid to 'the Accountant or Farmer, or his Heirs, by the Officer that 'should receive the same Money upon any of the said Sales, 'without further Warrant in that Behalf: And whereas by an 'Act, made in the twenty-seventh Year of the same Queen, 'after reciting certain Doubts upon the said Act of the thir-'teenth Year of her Reign, it was declared and enacted, That 'the said recited Act, in every Part thereof touching the Power 'thereby given to her Highness, her Heirs and Successors, to 'make Sale of any the Lands, Tenements, or Hereditaments, 'by the same Act limited to be sold, should be expounded 'and intended, as well in case where the Sale is to be made 'after the Death of such Accountant or Debtor, as where 'it is to be made in his or their Life-time; and also as well 'in case where the Account is made, or the Debt known, 'within eight Years after the Death of such Accountant or 'Debtor, as where the same Account is made, or the Debt 'known, in the Life-time of the same Accountant or Debtor; 'but it was provided, That after the Death of such Account-'ant or Debtor, and before any the Lands, Tenements, and 'Hereditaments, descended unto the Heir of such Accountant 'or Debtor as Heir, should be sold, a *Scire facias* should be 'awarded out of her Majesty's Court of Exchequer unto the 'Sheriff of the County where any such Lands lie, to garnish 'the same Heir, to shew Cause why the same Lands, Tene-'ments, and Hereditaments should not be put to Sale for Sa-'tisfaction of the same Debts or Farms in the said Act 'mentioned, according to the Tenor thereof; whereupon if the 'Heir should not, within a convenient Time, upon a Gar-'nishment or two *Nichils* returned, shew and prove unto the said 'Court that the Executors or Administrators of such Account-'ant or Debtor have sufficient, which ought to answer or be 'liable for the same Debt or Farm, then after ten Months

27 Eliz. c. 3.

'next after such two *Nichils* or Garnishment returned, the 'same Lands, Tenements, or Hereditaments, should be sold 'by her Majesty, her Heirs or Successors, and the Money 'thereof coming disposed according to the said former recited 'Act: And after various other enacting Clauses, there was a 'Proviso to prevent Sale of the Lands, Tenements, or Here-'ditaments of any Heir, during the Time of his or her Non-'age: And whereas by an Act, made in the thirty-ninth Year 'of the Reign of Queen *Elizabeth*, the said recited explanatory 'Act of the twenty-seventh Year of Queen *Elizabeth* was 'repealed, and a new Exposition was made of the said recited 'Statute of the thirteenth of *Elizabeth*, with various new Pro-'visions; but the said Act of the thirty-ninth Year of *Elizabeth* 'being only temporary, and having expired early in the 'Reign of *James* the First, the said explanatory Act of the 'twenty-seventh Year of *Elizabeth* became revived, and is now 'in force: And whereas it may tend greatly to facilitate and 'expedite the Payment of Debts to the Crown, where the real 'Estates of its Accountants or Debtors, or of their Sureties, are 'seized into the King's Hands under Writs of Extent, if a 'sufficient Part of such Estates was to be sold unto the Pro-'visions of the said recited Acts of the thirteenth and twenty-'seventh Years of Queen *Elizabeth*, but the said Acts have 'not been lately put in use, and Inconvenience is likely to 'arise if the Mode of Sale therein directed should be pur-'sued;' be it therefore declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful to and for his Majesty's Court of Exchequer, and the same Court is hereby authorised, on the Application of his Majesty's Attorney General in a summary Way, by Motion to the same Court, to order that the Right, Title, Estate, and Interest of any Debtor to his Majesty, his Heirs and Successors, and the Right, Title, Estate, and Interest of the Heirs and Assigns of such Debtor, in any Lands, Tenements, or Hereditaments, which have been, or shall hereafter be extended under and by virtue of any such Writ of Extent or *Diem clausit extremum* as aforesaid, or so much thereof as shall be sufficient to satisfy the Debt for which the same shall have been so extended, shall be sold in such Manner as the said Court shall direct; and that when a Purchaser or Purchasers shall be found, the Conveyance of the Lands, Tenements, or Hereditaments so decreed to be sold, shall be made to the Purchaser or Purchasers by his Majesty's Remembrancer in the said Court of Exchequer, or his Deputy, under the Direction of the said Court, by a Deed of Bargain and Sale, to be inrolled in the same Court; and that, from and after the making of such Conveyance, and the Inrollment thereof as aforesaid, the Bargainee or Bargainees in such Conveyance, and his or their Heirs, Executors, Administrators, and Assigns, shall have, hold, and enjoy the

No. 17.
25 George III. c. 35.

39 Eliz. c. 7.

Court of Exchequer, on Application of the Attorney General, may order the Estate of any Debtor to his Majesty, &c. to be sold

No 17.
25 George III. c. 35.

Lands, Tenements, and Hereditaments therein comprised, for his and their own respective Use and Benefit, not only against the Extent of the Crown, but also against such Debtor of the Crown, or the Surety or Sureties for such Debtor, and all Persons claiming under such Debtor, or the Surety or Sureties, unless by a Title paramount to and available in Law against such Extent as aforesaid, and all Monies which shall become payable from any such Purchaser or Purchasers as aforesaid, shall be paid, accounted for, and applied towards Discharge of the Debt due to the Crown, and of all Costs and Expences which shall be incurred by the Crown in enforcing the Payment of such Debt, in such Manner as the said Court of Exchequer shall from Time to Time order and appoint And if, after Payment of the whole Debt to the Crown, and of all Costs and Expences incurred in enforcing the Payment thereof, there shall be any Surplus of the Monies arising from any such Sale, the said Surplus shall belong to the same Person or Persons as would be entitled to the Lands, Tenements, or Hereditaments sold, if there had not been a Sale thereof and shall accordingly be paid to such Person or Persons, under the Order and Direction of the said Court of Exchequer, upon Motion or Petition to the said Court, to be made upon such Notice to the Crown, and to be supported by such Affidavits or other Proofs, as to the said Court shall from Time to Time seem just and reasonable

The Surplus, if any, after Payment of Debt and Costs, to be paid to the Persons intitled thereto

'II. And whereas, from the Want of the Deeds and 'Writings relative to the Title of such Lands, Tenements, 'and Hereditaments, as the said Court of Exchequer may 'decree to be sold under this Act, Difficulties may arise in the 'Execution hereof,' be it therefore further enacted, That it shall be lawful for the said Court of Exchequer, from Time to Time, to make such Order touching the Production, Delivery, and Custody of such Title Deeds and Writings as aforesaid, in the same Manner as if a Decree had been made by the said Court for a Sale of the Lands of a Crown Debtor, in Execution of a Trust created for Payment of Debts by such Crown Debtor himself.

Court of Exchequer may make an Order for the Production of Title Deeds

No 18.

25 George III. c 52.—An Act for better examining and auditing the Publick Accounts of this Kingdom.

No. 19.

39 George III. c. 83.—An Act for transferring to the Commissioners for auditing the Public Accounts, the Duties now performed in the Offices of the Auditors of the Land Revenue; and for directing the Mode of attesting the Accounts of the Paymaster-General of His Majesty's Forces.—[12*th.* *July* 1799.]

No. 20.

39 and 40 George III. c. 54.—An Act for more effectually charging Public Accountants with the Payment of Interest; for allowing Interest to them in certain Cases; and for compelling the Payment of Balances due from them.—[20*th.* *June* 1800.]

No. 21.

41 George III. c. 90.—An Act for the more speedy and effectual Recovery of Debts due to his Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of *Great Britain* and *Ireland*; and for the better Administration of Justice within the same.—[2*d.* *July* 1801.]

No. 21. 41 George III. c. 90.

When, upon any Account declared or recorded in the Court of Exchequer in England, or on Judgment of that Court, any Debt shall be due to his Majesty, a Copy of such Account, &c. shall on Application, be exemplified and transmitted to the Exchequer Court in Ireland, where it shall be inrolled, and Process issued against the Debtor's Body and Effects there

'FOR the more speedy and effectual Recovery of Debts ' due to his Majesty, his Heirs and Successors, in ' Right of the Imperial Crown of this Realm, and for the bet- ' ter Administration of Justice within the same;' be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, in all Cases where, upon any Account duly audited, declared, or recorded in his Majesty's Court of Exchequer in that Part of the United Kingdom of *Great Britain* and *Ireland* called *England*, or upon any Judgment or Decree of the same Court of Exchequer, any Debt or Duty shall be due to his Majesty, his Heirs and Successors, a Copy of such declared Account, Judgment, or Decree, shall, upon Application to the said Court, made on Behalf of his Majesty, his Heirs and Successors, be forthwith exemplified and transmitted, under the Seal of the said Court of Exchequer, to his Majesty's Court of Exchequer in that Part of the said United Kingdom called *Ireland*; which said last mentioned Court shall, upon the said Copy so exemplified being laid before them, forthwith cause the same to be inrolled in the Rolls of the said Court of Exchequer in *Ireland*; and upon the same being so inrolled, the said

No. 21.
41 George III. c. 90.

Court shall cause Process to issue for levying and recovering the Debt due on such declared Account, or for which such Judgment or Decree shall have been so obtained, as well against the Person of the Debtor upon such declared Account, or against whom such Judgment or Decree shall have been so obtained, as against his real or personal Estate, situate, lying, and being in that Part of the United Kingdom called *Ireland*, as fully and effectually to all Intents and Purposes as by the Course and Practice of his Majesty's Court of Exchequer in that Part of the said United Kingdom called *England* is or may be now awarded and issued by the same Court.

Sheriff shall account for Execution of the Process; and the money levied shall be paid into the Irish Exchequer, and remitted to the English Exchequer.

II. And be it further enacted, That the Sheriff or other proper Officer to whom such Process shall be so directed, shall be compelled to account to the said Court of Exchequer for the due Execution of such Process; and the Chancellor and Barons of the said Court shall take care that all Monies levied by virtue of such Process shall be duly paid into the Receipt of the Exchequer in *Ireland*, and the Lord High Treasurer of *Ireland*, or Lords Commissioners for executing the Office of Lord High Treasurer therein, shall, so soon as conveniently may be, cause the same to be remitted and paid into the Receipt of the Exchequer, in that Part of the United Kingdom called *England*.

In like Manner, where on any such declared Account recorded in the Court of Exchequer in Ireland, &c any Debt shall be due to his Majesty, the same Regulations shall be observed for the Recovery in England.

III. And be it further enacted, That from and after the passing of this Act, in all the Cases where, upon any such declared Account duly recorded in his Majesty's Court of Exchequer in that Part of the United Kingdom of *Great Britain* called *Ireland*, or upon any Judgment or Decree obtained in the said Court of Exchequer in *Ireland*, any Debt shall be due to his Majesty, his Heirs and Successors, a Copy of such declared Account, Judgment, or Decree, shall, upon Application to the said Court made on behalf of his Majesty, his Heirs and Successors, be forthwith exemplified and transmitted under the Seal of the said Court of Exchequer to his Majesty's Court of Exchequer in that Part of *Great Britain* called *England;* which said last mentioned Court shall, upon the said Copy so exemplified being laid before them, forthwith cause the same to be inrolled in the Rolls of the said Court of Exchequer in *England*, and upon the same being so inrolled, the said Court shall cause Process to issue for levying and recovering the Debt due upon such declared Account, or for which such Judgment or Decree shall have been so obtained, as well against the Person of the Debtor against whom Judgment or Decree shall have been so obtained, as against his Real and Personal Estate, situate, lying, and being in that Part of the United Kingdom called *England*, as fully and effectually, to all Intents and Purposes, as by the Usage and Practice of his Majesty's Court of Exchequer in that Part of the said United Kingdom called *Ireland*, is or may be now awarded and issued by the said Court.

Sheriff shall account for the

IV. And be it further enacted, That the Sheriff or other proper Officer to whom such Process shall be so directed, shall

No. 91.
41 George III.
c. 90

be compelled to account to the said Court of Exchequer for the due Execution of such Process, and the Chancellor and Barons of the said Court shall take care that all Monies levied by virtue of such Process shall be duly paid into the Receipt of the Exchequer in *England*, and the Lord High Treasurer of *England*, or Lords Commissioners for executing the Office of Lord High Treasurer therein, shall, so soon as conveniently may be, cause the same to be remitted and paid into the Receipt of the Exchequer of that Part of the United Kingdom called *Ireland*.

Execution of the Process, and Money levied shall be paid into English Exchequer, and remitted to Ireland.

V. And be it further enacted, That in Cases where, in any Suit between Party and Party, or in any Matter or Proceeding by Petition in Cases of Minors, Bankrupts, Idiots, or Lunaticks, any Decree shall be pronounced, or any Order made for Payment, or for accounting for Money, by the High Court of Chancery in that Part of the United Kingdom called *England*, the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal of *England*, for the Time being respectively, shall, upon Application made to him or them respectively, cause a Copy of such Order or Decree to be exemplified and certified to the Court of Chancery in that Part of the United Kingdom called *Ireland*, under the Great Seal of *England*; and the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal of *Ireland*, shall forthwith cause such Order or Decree, when it shall be presented to them respectively so exemplified, to be inrolled in the Rolls of the High Court of Chancery in *Ireland*, and shall cause Process of Attachment and Committal to issue against the Person of the Party against whom such Order or Decree shall have been made respectively, in order to enforce Obedience to and Performance of the same, as fully and effectually, to all Intents and Purposes, as if such Order or Decree had been originally pronounced in the said Court of Chancery in *Ireland*; and it shall and may be lawful to and for the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal of *Ireland* for the Time being, from Time to Time, to make Orders upon Petition as the Occasion may require for Payment of Money levied under such Process as aforesaid, into the Bank of *Ireland*, with the Privity of the Accountant General of the said Court, to the Credit, and for the Benefit of the Party who shall have obtained such Order or Decree; and the Governor and Company of the Bank of *Ireland* are hereby authorized and required to receive and hold all such Monies, subject to the Orders of the said Court of Chancery: Provided always, That no such Monies shall be charged with, or subject to Poundage for the Usher of the said Court of Chancery in *Ireland*, when the same shall be paid out by Order of the said Court.

Where, in any Suit between Party and Party, or in any Proceeding in Cases of Minors, &c. Orders shall be made for Payment of Money, &c. by the Court of Chancery in England, a Copy thereof shall be certified to the Court of Chancery in Ireland, where it shall be inrolled, and Process shall be issued to enforce Obedience [illegible]

VI. And be it further enacted, That in all Cases where, in any Suit between Party and Party, any Decree shall be pronounced, or any Order made for Payment, or for accounting for Money, by the High Court of Chancery in that Part of the

And where such Orders shall be made by the Court of Chancery, &c.

No. 21.
41 George III. c. 90.

Ireland, a Copy thereof shall be certified to the Court of Chancery in England where it shall be inrolled; and Process shall be issued to enforce Obedience, &c.

United Kingdom called *Ireland*, the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal of *Ireland* for the Time being respectively, shall, upon Application made to him or them respectively, cause a Copy of such Order or Decree to be exemplified and certified to the Court of Chancery in that Part of the United Kingdom called *England*, under the Great Seal of *Ireland*; and the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal of *England*, shall forthwith cause such Order or Decree, when it shall be presented to them respectively so exemplified, to be enrolled in the Rolls of the High Court of Chancery in *England*, and shall cause Process of Attachment and Committal to issue against the Person of the Party against whom such Order or Decree shall have been made respectively, in order to enforce Obedience to and Performance of the same, as fully and effectually, to all Intents and Purposes, as if such Order or Decree had been originally pronounced in the said Court of Chancery in *England*; and it shall and may be lawful to and for the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal of *England* for the Time being, from Time to Time, to make Orders upon Petition, as the Occasion may require, for Payment of Money levied under such Process as aforesaid, into the Bank of *England*, with the Privity of the Accountant General of the said Court, to the Credit and for the Benefit of the Party who shall have obtained such Order or Decree; and the Governor and Company of the Bank of *England* are hereby authorized and required to receive and hold all such Monies, subject to the Orders of the said Court of Chancery: Provided always, That no such Monies shall be charged with or subject to Poundage, when the same shall be paid out by Order of the said Court.

Orders for Payment of Money, made by the Court of Exchequer of England, shall, on Application, be certified to the Court of Exchequer in Ireland, where they shall be inrolled, and Process issued to enforce Obedience, &c.

VII. And be it further enacted, That in all Cases where, in any Suit between Party and Party, any Decree shall be pronounced, or any Order made for Payment, or for accounting for Money, by the Barons of his Majesty's Court of Exchequer, in that Part of *Great Britain* called *England*, the Lord Chief Baron, or any one of the Barons of the said Court for the Time being, shall, upon Application made to them respectively, cause a Copy of such Order or Decree to be exemplified and certified to the Barons of his Majesty's Court of Exchequer in that Part of the United Kingdom called *Ireland*, under the Seal of the said Court of Exchequer of *England*; and the Barons of the said Court of Exchequer in *Ireland* shall forthwith cause such Order or Decree, when it shall be presented to them so exemplified, to be inrolled in the Rolls of the Court of Exchequer in *Ireland*, and shall cause Process of Attachment and Committal to issue against the Person of the Party against whom such Order or Decree shall have been made respectively, in order to enforce Obedience to, and Performance of the same, as fully and effectually, to all Intents and Purposes, as if such Order or Decree had been originally

pronounced in the said Court of Exchequer in *Ireland*: And it shall and may be lawful to and for the Barons of the Court of Exchequer in *Ireland* for the Time being, from Time to Time, to make Orders upon Petition, as the Occasion may require, for Payment of Money levied under such Process as aforesaid, into the Bank of *Ireland*, in the Name of the Deputy Remembrancer of the said Court, in Trust for the Benefit of the Party who shall have obtained such Order or Decree; and the Governor and Company of the Bank of *Ireland* are hereby authorized and required to receive and hold all such Monies subject to the Orders of the said Court of Exchequer: Provided always, That no such Monies shall be charged with or subject to Poundage, when the same shall be paid out by Order of the said Court.

No. 21. 41 George III. c. 90.

VIII. And be it further enacted, That in all Cases where, in any Suit between Party and Party, any Decree shall be pronounced, or any Order made for Payment, or for accounting for Money, by the Barons of his Majesty's Court of Exchequer in that Part of the United Kingdom called *Ireland*, the Lord Chief Baron, or any one of the Barons of the said Court for the Time being, shall, upon Application made to them respectively, cause a Copy of such Order or Decree to be exemplified and certified to the Barons of his Majesty's Court of Exchequer in that Part of the United Kingdom called *England*, under the Seal of the Court of Exchequer in *Ireland*; and the Barons of the said Court of Exchequer in *England*, shall forthwith cause such Order or Decree, when it shall be presented to them so exemplified, to be inrolled in the Rolls of the Court of Exchequer in *England*, and shall cause Process of Attachment and Committal to issue against the Person of the Party against whom such Order or Decree shall have been made respectively, in Order to enforce Obedience to, and Performance of the same, as fully and effectually, to all Intents and Purposes, as if such Order or Decree had been originally pronounced in the said Court of Exchequer in *England*; and it shall and may be lawful to and for the Barons of the Court of Exchequer in *England*, for the Time being, from Time to Time, to make Orders upon Petition as the Occasion may require, for Payment of Money levied under such Process as aforesaid into the Bank of *England*, in the Name of the Deputy Remembrancer of the said Court, in Trust for the Benefit of the Party who shall have obtained such Order or Decree, and the Governor and Company of the Bank of *England* are hereby authorized and required to receive and hold all such Monies, subject to the Orders of the said Court of Exchequer: Provided always, That no such Monies shall be charged with or subject to Poundage, when the same shall be paid out by Order of the said Court.

And Orders made by the Court of Exchequer in Ireland, shall, on Application, be certified to the Court of Exchequer in England, where they shall be inrolled, and Process issued to enforce Obedience, &c.

IX. And, for the better and more effectual Proof of the Statute Law of the Kingdoms of *Great Britain* and *Ireland*, and of *England* and *Ireland*, previous to the Union of the said Kingdoms, in all Courts of Civil and Criminal Jurisdiction in

The Statutes of England, and of Great Britain, printed and published by the

No. 21. 41 George III. c. 90.

King's Printer shall be received as conclusive Evidence in any Court in Ireland; and the Statutes of Ireland prior to the Union, so printed and published, shall in like Manner be Evidence in any Court in Great Britain.

every Part of the said United Kingdom; be it enacted, That the Copy of the Statutes of the Kingdom of *England*, and of the Kingdom of *Great Britain* since the Union with *Scotland*, printed and published by the Printer duly authorized to print and publish the same by his Majesty, or by any of his Royal Predecessors, shall be received as conclusive Evidence of the several Statutes made and enacted prior to the Union of the Kingdoms of *Great Britain* and *Ireland*, by the Parliaments of *England* and *Great Britain* respectively, in all Suits, Actions, or Prosecutions respectively, commenced, instituted, or carried on, or to be commenced, instituted, or carried on, in any Court of Civil or Criminal Jurisdiction, in that Part of the United Kingdom called *Ireland;* and in like Manner the Copy of the Statutes of the Kingdom of *Ireland*, made and enacted by the Parliament of the same, prior to the Union of the Kingdoms of *Great Britain* and *Ireland*, and printed and published by the Printer, duly authorized by his Majesty, or any of his Royal Predecessors, to print and publish the same, shall be received as conclusive Evidence of the several Statutes made and enacted by the Parliament of *Ireland*, prior to the Union of the Kingdoms of *Great Britain* and *Ireland*, in all Suits, Actions, or Prosecutions respectively, commenced, instituted, or carried on, or to be commenced, instituted, or carried on, in any Court of Civil or Criminal Jurisdiction, in that Part of the United Kingdom called *Great Britain.*

No. 22.

42 George III. c. 70.—An Act for directing certain publick Accounts to be laid annually before Parliament, and for discontinuing certain other Forms of Account now in Use.—[22*d. July* 1802.]

No. 23.

46 George III. c. 141.—An Act for making more effectual Provision for the more speedy and regular Examination and Audit of the Publick Accounts of this Kingdom.—[22*d. July*, 1806.]

No. 24.

47 George III. c. 89, sess. 2.—An Act for more effectually charging Publick Accomtants with Interest upon Balances; and for other Purposes relating to the passing of Public Accounts.—[8*th. August*, 1807.]

No. 25.

48 George III. c. 58.—An Act for amending the Law with regard to the Course of Proceeding on Indictments and Informations in the Court of King's Bench in certain Cases; * * * * * * * * * * * * and for requiring Officers taking Bail in the King's Suit to assign the Bail Bonds to the King.—[1st. *June*, 1808.]

P.

No. 25.
48 George III. sess. 2. c. 58.

Bail Bonds in the King's Suits shall be assigned by the Sheriffs, &c.

III. AND be it further enacted, That if any Person shall be arrested after the passing of this Act, by any Writ of *Capias ad Respondendum* issuing out of any of His Majesty's Courts of Record at *Westminster*, or out of the Superior Court of Record of either of the Counties Palatine, or out of any of the Courts of Great Sessions in *Wales*, at the Suit of the King's Majesty, His Heirs or Successors, and the Sheriff or other Officer shall take Bail from such Person, the Sheriff or other Officer, at the Request and Costs of the Prosecutor of such Writ, shall assign to the King's Majesty, His Heirs and Successors, the Bail Bond taken from such Bail, by indorsing the same, and attesting it under his Hand and Seal in the Presence of Two or more credible Witnesses, which may be done without any Stamp, provided the Assignment so indorsed be duly stamped before any Suit be commenced thereupon; and if such Bail Bond be forfeited, such Process shall thereupon issue as on Bonds originally made to the King's Majesty, His Heirs and Successors, and the Court in which such Bail Bond is put in Suit, may by Rule or Rules of the same Court give such Relief to the Defendant or Defendants as is agreeable to Justice and Reason.

Part IV. Class XXIV.

ECCLESIASTICAL AND MARITIME COURTS.

No. 1.

13 Edward I. stat. 4 —Certain Cases wherein the King's Prohibition doth not lie.

No. 1. 13 Edward I. stat. 4. Cases wherein the King's Prohibition doth not lie.

Cotton MS. *Claudius*, D. 2.

THE *King to his Justices* ' *sendeth greeting.* Use ' yourselves circumspectly in ' all Matters concerning the ' Bishop of *Norwich* and his ' Clergy, not punishing them ' if they hold Pleas in Court ' Christian of such Things as ' be meer spiritual, that is to ' wit, of Penance enjoined by ' Prelates for deadly Sin, as ' Fornication, Adultery, and ' such like, for the which ' sometimes Corporal Penance, ' and sometime Pecuniary is ' enjoyned, specially if a Free- ' man be convict of such ' Things. Also if Prelates do ' punish for leaving the Church- ' yard unclosed, or for that the ' Church is uncovered, or not ' conveniently decked, in ' which Cases none other Pen- ' ance can be enjoyned but ' Pecuniary.

CIRCUMSPECTE agatis de negotio tangente dominum Episcopum Norwicen' et clerum non puniendo eos si placita tenuerint de hiis que mere sunt spiritualia videlicet de correctionibus quos Prelati faciunt pro mortali peccato videlicet fornicatione adulterio & hujusmodi pro quibus aliquando infligitur pena corporalis aliquando pecuniaria maxime si convictus sit de hiis liber homo.

Item si Prelatus pro cimiterio non clauso ecclesia discooperta vel non decenter ornata in quibus casubus alia pena non potest infligi quam pecuniaria penam imponat.

Tithes and Offerings.

' *Item,* If a Parson demand ' Tithes greater or smaller, so ' that the fourth Part of the ' Value of the Benefice be not ' demanded.

Item si Rector petat decimam majorem vel minorem dummodo non petatur quarta pars alicujus ecclesie.

Cotton *MS.*

Item si Rector petat mortuarium in partibus ubi mortuar' dari consueverit.

Item si Prelatus alicujus ecclesie petat pensionem a Rectore sibi debitam omnes hujus pensiones faciende sunt in foro ecclesiastico.

De violenta manuum injectione in clericum et in causa diffamationis concessum fuit alias quod placita inde teneantur in Cur' Christianitatis dummodo non petatur pecunia sed agatur ad correctionem peccati.

In omnibus istis casibus habet judex ecclesiasticus cognoscere regia prohibitione non obstante licet porrigatur ob quod impetrant laici prohibitionem in genere super decima oblationibus mortuar' redemptionibus penitentiarium violenta manuum injectione in clericum et conversum & in causa diffamationis in quibus casibus agitur ad penam canonicam capiend'.

'*Item*, If a Parson demand 'Mortuaries in Places where a 'Mortuary hath been used to 'be given.

No. 1. 13 Edward I. stat. 4.

'*Item*, If a Prelate of a Church demand of a Parson a Pension due to him, all 'such Demands are to be made 'in a Spiritual Court. And for 'laying violent Hands on a 'Clerk, and in cause of Defa'mation, it hath been granted 'already, that it shall be tried in a Spiritual Court, when Money is not demanded, but a Thing done for Punishment of Sin. In all Cases afore rehearsed, the Spiritual Judge shall have Power to take Knowledge, notwithstanding the King's Prohibition.'

Pension. Defamation.

Breach of an Oath.

Respondit dominus Rex ad istos articulos quod in decimis obventionibus oblationibus mortuar' quando agitur ut predictum est prohibitioni non est locus. Et si clericus vel Religiosus decimas suas in horreo congregatas vel alibi existentes vendiderit pro pecunia alicui & implacitetur in Cur' Christianitatis locum habet regia prohibitio quia per venditiones res spirituales sunt temporales & sic transeunt decime in catallis.

Item si contentio sit de jure decimarum originem habens de jure Patronatus & earum decimarum quantitas excedat quartam partem ecclesie locum habet regia prohibitio.

Item si Prelatus imponat penam pecuniariam alicui pro peccato & petat illam pecuniam locum habet regia prohibitio si coram Prelatis pecunia exigatur.

Item si quis manus violentas injecerit in clericum pro pace domini Regis debent emende fieri coram Rege pro excommunicatione vero coram Episcopo & si imponatur pena corporalis quam si reus velit redimere dando prelato vel leso pecuniam potest nec in talibus locus est prohibitioni.

In diffamationibus liberorum corrigant Prelati regia prohibitione non obstante licet porrigatur.

No. 2.

24 Edward I.—In what Case a Consultation is grantable

No. 2.
24 Edward I.

"WHEREAS Ecclesiastical Judges have often "surceased to proceed in Causes moved before them, by "Force of the King's Writ of "Prohibition, in Cases wherein Remedy could not be "given to Complainants in the "King's Court, by any Writ "out of the Chancery, whereby "such Plaintiffs were deferred "of their Right and Remedy "in both Courts, as well Temporal as Spiritual, to their "great Damage, like as the "King hath been advertised "by the grievous Complaint of "his Subjects:" 'Our Lord 'the King willeth and commandeth, That where Ecclesiastical Judges do surcease in 'the aforesaid Cases, by the 'King's Prohibition directed 'unto them, that the Chancellor, or the Chief Justice of 'our Lord the King for the 'Time being, upon Sight of 'the Libel of the same Matter, at the Instance of the Plaintiff (if they can see that the 'Case cannot be redressed by 'any Writ out of the Chancery, but that the Spiritual 'Court ought to determine the 'Matters) shall write to the 'Ecclesiastical Judges, before 'whom the Cause was first 'moved, that they proceed 'therein, notwithstanding the 'King's Prohibitio. directed to 'them before.

Cotton *MS. Claudius*, D. 2.

CUM Judices ecclesiastici ad prosequend' in causis coram ipsis agitatis per prohibic' Domini Regis sepius supersedeant in casibus ubi remedium conquerentibus ad Cur' Domini per breve' de Cancellar' sua fieri non possit propter quod querentes illi in utraque Cur' tam Regia quam ecclesiastica jure suo & remedio sunt elongati ad grave dampnum ipsorum prout Dominus Rex ex gravi querela quorundam intellexit.

Dominus Rex vult & precepit quod cum Judices ecclesiastici per prohibitionem Regiam sibi porrectam supersedeant in casibus predictis quod Cancellar' vel Capitalis Justic' ipsius Domini Regis qui pro tempore fuerit viso libello illius cause ad instanciam querentis si viderint quod per breve de Cancellar' querenti remedium in suo casu fieri non possit set quod ad Cur' ecclesiasticam pertineat causam illam determinare scribant Judicibus coram quibus causa illa prius fuit agitata quod in causa illa procedant non obstante prohibicione Regia sibi prius inde directa, &c. Dat. anno xviii°.

No. 3.

9 Edward II. stat. 1.—De diversis Libertatibus Clero concessis.

Ex Rot. in Turr. Lond. *m.* 34 D.

REX omnibus ad quos &c. salutem. Sciatis quod cum dudum temporibus progenitorum nostrorum quondam Regum Anglie in diversis parliamentis suis et similiter postquam regni nostri gubernacula suscepimus in parliamentis nostris per prelatos et clerum regni nostri plures articuli continentes gravamina aliqua ecclesie Anglicane & ipsis prelatis & clero illata ut in eisdem asserebatur porrecti fuissent & cum instantia supplicatum ut inde apponeretur remedium opportunum ac nuper in parliamento nostro apud Lincoln' anno regni nostri nono articulos subscriptos & quasdam responsiones ad aliquos eorum prius factas coram concilio nostro recitari ac quasdam responsiones corrigi & ceteris articulis subscriptis per nos & dictum consilium nostrum fecerimus responderi quorum quidem articulorum & responsionum tenores subsequuntur in hunc modum.

"THE King to all to whom, *&c.* sendeth Greeting. Understand ye, That whereas of late Times of our Progenitors sometimes Kings of *England*, in divers their Parliaments, and likewise after that we had undertaken the Governance of the Realm, in our Parliaments many Articles containing divers Grievances (committed as therein was said against the Church of *England*, the Prelates and Clergy) were propounded by the Prelates and Clerks of our Realm; and further, great Instance was made that convenient Remedy might be provided therein: And of late in our Parliament holden at *Lincoln*, the ninth Year of our Reign, we caused the Articles underwritten, with certain Answers made to some of them heretofore, to be rehearsed before our Council, and made certain Answers to be corrected; and to the Residue of the Articles underwritten, Answers were made by Us and our Council; of which said Articles, with the Answers of the same, the Tenors here ensue."

No. 3. 9 Edward II. stat. 1.

(A.) c. 1.—No Prohibition shall be granted where Tythes be demanded, where Money is paid for them.

IN primis laici impetrant prohibitionem in genere super decimis obventionibus ob-

FIRST, whereas Lay-men do purchase Prohibitions generally upon Tythes, Ob-

No. 3. 9 Edward II. stat. 1. c. 1.

No. 3.
9 Edward II.
stat. 1. c. 1.

'ventions, Oblations, Mortuaries, Redemption of Penance, "violent laying Hands "on Clerks or Converts, and "in Cases of Defamation, in "which Cases Spiritual Penance ought to be enjoined;" 'the King doth answer to this 'Article, That in Tythes, Oblations, Obventions, Mortuaries (when they are propounded under these Names), 'the King's Prohibition shall 'hold no Place, although for 'the long withholding of the 'same, the Money may be 'esteemed at a Sum certain. 'But if a Clerk or a religious 'Man do sell his Tythes being 'gathered in his Barn, or 'otherwise, to any Man for 'Money, if the Money be demanded before a spiritual 'Judge, the King's Prohibition 'shall lie; for by the Sale the 'spiritual Goods are made 'temporal, and the Tythes 'turned into Chattels.'

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lationibus mortuariis redemptionibus penitentiarum violenta manuum injectione in clericum vel convertum & in causis diffamationis in quibus agitur ad penam canonicam imponendam Rex ad istum articulum respondet quod in decimis oblationibus obventionibus mortuariis quando super istis nominibus proponuntur prohibitioni regie non est locus etiam si propter detentionem istorum diuturnam ad estimationem earundem pecuniariam veniatur. Set si clericus vel Religiosus decimas suas in horreo suo congregatas vel alibi existentes vendiderit alicui pro pecunia si petatur pecunia coram Judice ecclesiastico locum habet prohibitio quia per venditionem res spirituales fiunt temporales et transeunt decime in catalla.

(B.) c. 2.—Debate upon the Right of Tythes exceeding the Fourth Part. Enjoining Penance Corporal or Pecuniary.

No. 3.
9 Edward II.
stat. 1. c. 2.

'ALSO if Debate do arise 'upon the Right of 'Tythes, having his Original 'from the Right of the Patronage, and the Quantity of the 'same Tythes do come unto 'the fourth Part of the Goods 'of the Church, the King's 'Prohibition shall hold Place, 'if the Cause come before a 'Judge Spiritual. Also if a 'Prelate enjoin a Penance Pecuniary to a Man for his Offence, and it be demanded, 'the King's Prohibition shall 'hold Place. But if Prelates

ITEM si sit contentio de jure decimarum originem habens ex jure patronatus et earundem decimarum quantitas ascendat ad quartam partem bonorum ecclesie locum habet regia prohibitio si hec causa coram ecclesiastico Judice ventiletur. Item si prelatus imponat penam pecuniariam alicui pro peccato et repetat illam regia prohibitio locum habet verumptamen si prelati imponant penitentias corporales et sic puniti velint hujusmodi penitentias per pe-

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cuniam sponte redimere non habet locum regia prohibitio si coram prelatis pecunia ab eis exigatur.

'enjoin a Penance Corporal, 'and they which be so punished will redeem upon their 'own Accord such Penances 'by Money, if Money be demanded before a Judge Spiritual, the King's Prohibition 'shall hold no Place.'

No. 3. 9 Edward II. stat. 1. c. 2.

(C.) c. 3.—Laying violent Hands upon a Clerk. Excommunication for Penance Corporal.

INSUPER si aliquis violentas manus injecerit in clericum pro violata pace debet emenda fieri coram rege pro excommunicatione vero coram prelato ut imponatur penitentia corporalis quam si reus velit sponte per pecuniam redimere dandam prelato vel leso potest repeti coram prelato nec in talibus regia prohibitio locum habet.

'MOREOVER, if any lay 'violent Hands on a 'Clerk, the Amends for the 'Peace broken shall be before 'the King, and for the Excommunication before a Prelate, 'that Penance Corporal may 'be enjoined; which if the 'Offender will redeem of his 'own good Will, by giving 'Money to the Prelate, or to 'the Party grieved, it shall 'be required before the Prelate and the King's Prohibition shall not lie.'

No. 3. 9 Edward II. stat. 1. c. 3.

(D.) c. 4.—Prelates may correct for Defamation.

IN diffamationibus etiam corrigant prelati supradicto modo regia prohibitione non obstante.

'IN Defamations also Prelates shall correct in manner abovesaid, the King's 'Prohibition notwithstanding.'

No. 3. 9 Edward II. stat. 1. c. 4.

(E.) c. 5.—No Prohibition where Tithe is demanded of a new Mill.

ITEM si aliquis in fundo suo molendinum erexerit de novo et postea a Rectore loci exigatur decima de eodem exhibetur prohibitio regia sub hac forma *Quia de molendino tali hactenus decime non fuerunt solute prohibemus &c. et sententiam excommunicationis si quam*

"ALSO if any do erect "in his Ground a Mill "of new, and after the Parson "of the same Place demandeth "Tithe for the same, the King's "Prohibition doth issue in this "Form: Quia de tali molendino hactenus decimæ non "fuerunt solutæ, prohibemus,

No. 3. 9 Edward II. stat. 1. c. 5.

No. 3. 9 Edward II. stat. 1. c. 5.

"&c. et sententiam excommunicationis, si quam hac "occasione promulgaveritis, "revocetis omnino. The Answer." 'In such Case the 'King's Prohibition was never 'granted by the King's Assent, nor never shall, which 'hath decreed that it shall not 'hereafter lie in such Cases.'

Ex Rot. in Turr. Lond. *hac occasione promulgaveritis revocetis omnino, Responsio.* In tali casu nunquam exivit prohibitio de principis voluntate qui et decernit talem perpetuo non exire.

(F.) c. 6.—Where a Suit for one Offence may be prosecuted both in Court Spiritual and Temporal.

No. 3. 9 Edward II. stat. 1. c. 6.

"ALSO if any Cause or "Matter, the Knowledge whereof belongeth to a Court Spiritual, and shall "be definitively determined "before a Spiritual Judge, and "doth pass into a Judgment, "and shall not be suspended "by an Appeal; and after, if "upon the same Thing a "Question is moved before "a Temporal Judge between "the same Parties, and it be "proved by Witness or Instruments, such an Exception is not to be admitted in "a Temporal Court, The "Answer." 'When any one 'Case is debated before Judges 'Spiritual and Temporal (as 'above appeareth upon the 'Case of laying violent Hands 'on a Clerk) it is thought, 'that notwithstanding the Spiritual Judgment, the King's 'Court shall discuss the same 'Matter as it shall deem expedient.'

ITEM si aliqua causa vel negotium cujus cognitio spectat ad forum ecclesiasticum et coram ecclesiastico Judice fuerit sententialiter terminata et transierit in rem judicatam nec per appellationem fuerit suspensa et postmodum coram judice seculari super eadem re inter easdem personas questio moveatur et probetur per testes vel instrumenta talis exceptio in foro seculari non admittetur. *Responsio.* Quando eadem causa diversis rationibus coram Judicibus ecclesiasticis et secularibus ventilatur ut supra patet de injectione violenta manuum in Clericum dicunt quod non obstante ecclesiastico judicio Cur' Regis ipsum tractat negotium ut sibi expedire videtur ecclesiastico judicio non obstante.

(G.) c. 7.—In what only Case the King's Letters shall be sent to discharge an Excommunicate.

No. 3. 9 Edward II. stat. 1. c. 7.

"ALSO the King's Letter "directed unto Ordinaries, that have wrapped "those that be in Subjection

ITEM littera regia ordinariis dirigitur qui aliquos suos subditos excommunicationis vinculo innodarunt quod eos

Ex Rot. in Turr. Lond.

absolvant infra certum diem alioquin quod compareant responsuri quare eos excommunicaverunt. *Responsio.* Rex decernit quod talis littera nunquam exire imposterum permittatur nisi in casu quo posset inveniri ledi per excommunicationem regiam libertatem.

" unto them in the Sentence " of Excommunication, that " they should assoil them by a " certain Day, or else that " they do appear, and shew " wherefore they have excommunicated them. The Answer." 'The King decreeth, That hereafter no 'such Letters shall be suffered 'to go forth, but in case where 'it is found that the King's 'Liberty is prejudiced by the 'Excommunication.'

No. 3.
9 Edward II

(H.) c. 8.—Clerks in the King's Service shall be discharged of their Residence, but shall be corrected by the Ordinary.

(I.) c. 9.—Distresses shall not be taken in the Highways, nor in the ancient Fees of the Church.

(J.) c. 10.—They that abjure the Realm shall be in Peace, so long as they be in the Church or Highway.

(K.) c. 11.—Religious Houses shall not be charged by Compulsion with Corodies, Pensions, Resort, or taking of their Horses or Carts.

(L.) c. 12.—A Clerk excommunicate may be taken out of the Parish where he dwelleth.

ITEM si aliqui de tenura domini Regis vocati coram ordinariis extra parochiam in qua degunt si propter suam manifestam contumaciam excommunicentur ac post quadraginta dies pro eorum captione scribatur pretendunt se privilegiatos quod extra villam seu parochiam suam non debent vocari et sic denegatur breve

" ALSO if any of the " King's Tenure be called before their Ordinaries " out of the Parish where they " continue, if they be excommunicate for their manifest " Contumacy, and after forty " Days a Writ goeth out to " take them, they pretend their " Privilege that they ought not " to be cited out of the Town

No. 3.
9 Edward II.
stat. 1. c. 12.

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No. 3. 9 Edward II. stat. 1. c. 12.

"and Parish where their "Dwelling is; and so the "King's Writ that went out "for to take them, is denied." *The Answer.* 'It was never 'yet denied, nor shall be here- 'after.'

regium pro captione eorundem. *Responsio.* Nunquam fuit negatum nec negabitur in futurum.

(M.) c. 13.—The Examination of a Parson presented to a Benefice belongeth to a Spiritual Judge.

No. 3. 9 Edward II. stat. 1. c. 13.

"ALSO it is desired that "Spiritual Persons, whom "our Lord the King doth pre- "sent unto Benefices of the "Church (if the Bishop will "not admit them either for "lack of Learning, or for "other Cause reasonable) may "not be under the Examina- "tion of Lay Persons in the "Cases aforesaid, as it is now "attempted, contrary to the "Decrees Canonical, but that "they may sue unto a Spiritual "Judge for Remedy, as Right "shall require." *The Answer.* 'Of the Ability of a Parson 'presented unto a Benefice of 'the Church, the Examination 'belongeth to a Spiritual Judge, 'and so it hath been used here- 'tofore, and shall be hereafter.'

ITEM petitur quod persone ecclesiastice quas dominus Rex ad benificia presentat ecclesiastica si Episcopus eas non admittat ut puta propter defectum scientie vel aliam causam rationabilem non subeant examinationem laicarum personarum in casibus ante dictis prout hiis temporibus attemptatur de facto contra canonicas sanctiones set adeant Judicem ecclesiasticum ad quem de jure pertinet pro remedio prout justum fuerit consequendo. *Responsio.* De idoneitate persone presentate ad beneficium ecclesiasticum pertinet examinatio ad Judicem ecclesiasticum et ita est hactenus usitatum et fiet in futurum.

(N.) c. 14.—There shall be free Election of Dignities of the Church.

(O.) c. 15.—A Clerk fleeing into the Church for Felony, shall not be compelled to abjure.

(P.) c. 16.—The Privilege of the Church being demanded by the Ordinary, shall not be denied to a Clerk that hath confessed Felony.

No. 4.

1 Edward III. st. 2. c. 2.—How every Person may use his Woods within the Forest. Seising of Bishops Temporalties.

No. 5.

18 Edward III. stat. 3. c. 6.—Temporal Justices shall not inquire of Process awarded by Spiritual Juries.

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ITEM qe par la ou commissions sont faites de novel as diverses Justicez qils facent enquestes sur Juges de seint eglise le quel qils facent joust processe ou excesse en cause du testament & autres les queux notoriement apartiegnent a la conisaunce de seint eglise les ditz Justices ount enquis & fount enditer juges de seint eglise en blemissement de la franchise de seint eglise qe tieles commissions soient repellez & desoremes defenduz save larticle de Eyr tiele come il doit estre.

"ITEM, Whereas Commissions be newly made to "divers Justices," that they "shall make Inquiries upon "Judges of holy Church, "whether they made just "Process or excessive in "Causes Testamentary, and "other, which notoriously "pertaineth to the Cognisance of holy Church, the "said Justices have enquired, "and caused to be indicted, "Judges of holy Church, in "blemishing of the Franchise "of holy Church;" 'that such 'Commissions be repealed, 'and from henceforth defended, saving the Article in 'Eyre, such as ought to be.'

No. 5. 18 Edward III. st. 3. c. 6.

No. 6.

50 Edward III. c. 4.—No Prohibition shall be allowed after Consultation duly granted.

ITEM est ordine & establi de lassent avantdit qe par la ou consultation est une foitz duement graunteż sur prohibition faite a Juge de seinte eglise qe mesme le Juge puisse procedre en la cause par vertue de mesme la consultation non obstante ascun autre prohibition sur ceo a luy baille Purveu touefoitz qe la mattire en la libell du dite cause ne soit engrosee enlargee ou par autre manere chaungee.

ITEM it is ordained and stablished of the said Assent, That whereas a Consultation is once duly granted 'upon a Prohibition made to a 'the Judge of the Holy Church, 'that the same Judge may proceed in the Cause by virtue of 'the same Consultation, notwithstanding any other Prohibition thereupon to him delivered: Provided always, 'that the Matter in the Libel 'of the said Cause be not engrossed, enlarged, or otherwise changed.'

No. 6. 50 Edward III. c. 4.

No. 7.

1 Richard II. c. 13.—Ecclesiastical Judges shall not be vexed for Suits for Tythes in a Spiritual Court.

No. 7. 1 Richard II. c. 13.

"ITEM, the Prelates and "Clergy of this Realm "do greatly complain them, for that the People of holy "Church, pursuing in the Spi- "ritual Court for their Tithes, "and their other Things, "which of right ought, and "of old Times were wont to "pertain to the same Spiritual "Court, and that the Judges "of holy Church, having Cog- "nisance in such Cases, and "other Persons thereof med "dling according to the Law, "be maliciously and unduly "for this Cause indicted, im- "prisoned, and by Secular "Power horribly oppressed, "and also enforced with Vio- "lence by Oaths and grievous "Obligations, and many other "Means unduly compelled to "desist and cease utterly of "the Things aforesaid, against "the Liberties and Franchises "of holy Church." 'Where- 'fore it is assented, That all 'such Obligations made or to 'be made by Duress or Vio- 'lence, shall be of no Value. 'And as to those that by Ma- 'lice do procure such Indict- 'ments, and to be the same 'Indictors, after the same In- 'dictees be so acquit, such 'Procurers shall have and in- 'cur the same Pain that is 'contained in the Statute of '*Westminster* the Second, of 'those which procure false 'Appeals to be made. And 'the Justices of Assizes, or 'other Justices before whom 'such Indictees shall be ac- 'quit, shall have Power to in-

The Penalty of those which do procure such Indictments.

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ITEM les prelatz & le clergie de dit Roialme se pleignont grandement de ce qe les gentz de seint eglise pursuiantz en court Christiene pur lour dismes & autres choses quele de droit deyvent & de aunciene soleient appartenere a mesme la court Christiene & les Juges de seint eglise conissantz en tiels causes & autres persones soy en entremettantz solonc la leye sont malicioument & nonduement par celle cause enditez enprisonez & par seculer poair orriblement oppressez & auxint efforcez ove violence par sermentz & grevouses obligations & moutz dautres maners non duement compulsez a desister & cesser outrement es choses desusdites encontre les libertees & fraunchises de seint eglise par quoy est assentuz qe touz tielx obligations faitz ou affairs par durece & violence ne soient jammes dascun value. Et quant a ceux qi procurent par malice teux enditementz & destre mesmes des enditours apres ceo qe les enditez ent sont aquitez eient & encourgent tieux procurours & enditours mesme la peyne qest contenue en lestatut de Westm' seconde de ceux qi procurent faux apelles estrefaitz. Et eient les Justices des assises ou autres Justices devant queux tieux enditez serront aquitez poiair denquerre de tieux procurours & enditours & de les punir duement chescun solonc son desert.

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'quire of such Procurers and 'Indictors, and duly to punish 'them according to their De'sert.'

No. 7. 1 Richard II. c. 13.

No. 8.

1 Richard II. c. 14.—In an Action of Goods taken away, the Defendant maketh Title for Tithes due to the Church.

ITEM est assentuz qe a quel heure qe ascun persone de seint eglise soit treet en plee en court seculer pur ses propres dismes prisez par noun des biens enportez & celui qe ensi ent est treet en plee face exception ou allegge qe la substance & source de la bosoigne soit soulement sur dismes duez de droit & possession de sa eglise ou a autre son benefice qe en tieu cas general averement ne soit jammes pris sanz monstrer matier especial coment ceo fuist lay chatell.

'ITEM, it is accorded, That 'at what Time that any 'Person of the Holy Church 'be drawn in Plea in the Secu'lar Court, for his own Tithes 'taken, by the Name of Goods 'taken away, and he which is 'so drawn in Plea maketh an 'Exception, or alledgeth, that 'the Substance and Suit of the 'Business is only upon Tithes 'due of Right and of Posses'sion to his Church, or to ano'ther his Benefice, that in such 'Case the general Averment 'shall not be taken without 'shewing specially how the 'same was his Lay-chattel.'

No. 8. 1 Richard II c. 14.

No. 9.

13 Richard II. st. 1. c. 5.—What Things the Admiral and his Deputy shall meddle.

ITEM pur ceo qe grant & commune clamour & pleint ont este sovent faitz devant ces heares & unqore sont de ce qe les Admiralx & lour deputees tiegnent lour sessions en diverses places deinz le Roialme sibien deinz franchises come dehors accrochantz a eux plus grant poair qe a lour office appartient en prejudice de nostre Seignur le Roy & la commune ley du Roialme & grant emblemissement des plusours diverses franchises & en

"ITEM, Forasmuch as a "great and common Cla"mour and Complaint hath "been oftentimes made be"fore this Time, and yet is, "for that the Admirals and "their Deputies hold their "Sessions within divers Places "of this Realm, as well with"in Franchise as without, ac"croaching to them greater "Authority than belongeth to "their Office, in prejudice of "our Lord the King, and the "common Law of the Realm,

No. 9. 13 Richard II. st. 1. c. 5.

No. 9. 13 Richard II. c. 14.

"and in diminishing of divers "Franchises, and in Destruction and impoverishing of "the common People;' 'it 'is accorded and assented, 'That the Admirals and their 'Deputies shall not meddle 'from henceforth of any thing 'done within the Realm, but 'only of a Thing done upon 'the Sea, as it hath been used 'in the Time of the noble 'Prince King EDWARD, 'Grandfather of our Lord the 'King that now is.'

Ex Rot in Turr. Lond. destruction & empoverissement del commune poeple Accordez & assentuz qe les Admiralx & lour deputees ne soi mellent desore enavant de null chose fait deinz le Roialme mes soulement de chose fait sur le meer solonc ceo qad este duement use el temps du noble Roy *Edward* Aiel nostre Seignur le Roi qor est.

No. 10

15 Richard II. c. 3.—In what Places the Admiral's Jurisdiction doth lie.

No. 10. 15 Richard II. c. 3.

ITEM, At the great and grievous Complaint of all the Commons made to "our Lord the King in this "present Parliament, for that "the Admirals and their Deputies do incroach to them "divers Jurisdictions, Franchises, and many other "Profits pertaining to our "Lord the King, and to other "Lords, Cities and Boroughs, "other than they were wont "or ought to have of Right, "to the great Oppression and "Impoverishment of all the "Commons of the Land, and "Hindrance and Loss of the "King's Profits, and of many "other Lords, Cities, and "Boroughs through the "Realm;" 'it is declared, 'ordained, and established, 'That of all Manner of Contracts, Pleas, and Quarrels, 'and all other Things rising 'within the Bodies of the 'Counties, as well by Land 'as by Water, and also of 'Wreck of the Sea, the Admiral's Court shall have no

ITEM a la grant & grevouse compleint de tout la commune fait a nostre Seignur le Roi en cest present parlement de ce qe les Admiralx & lour deputees accrochent a eux diverses jurisdictions franchises & plusours autres profitz qe appartiegnent a n[os]tre Seignur le Roi & as autres Seignurs cite[es] & burghs autres qils ne soloient ne ne deveroient avoir de droit a tresgrant oppression & empoverissement de toute la commune de la terre & arrerissement & perde des profitz nostre Seignur le Roi & de plusours autres Seignurs citees & burghs parmy le Roialme declarez est ordeignez & establi qe de toutes maneres contractz plees & querelles & de toutes autres choses faitz ou sourdantz deinz les corps des countees sibien par terre come par eawe & aussint de wrek de meer la court de ladmirall eit nulle manere conissance poair ne jurisdiction mes soient toutz tielx maneres contractes plees & quereles & toutes autres

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choses sourdantz deinz les corps des countees sibien par terre come par eawe come desuis & auxint wrek de meer triez terminez discus & remediez par les loyes de la terre & nemye devant ne par ladmiral ne son lieutenant en nulle manere. Nientmeyns de mort de homme & de maheym faitz es grosses niefs esteantz & hoverantz en my le haut fil des grosses rivers tantsoulement paraval les pountz de mesmes les rivers pluis proscheins al meer & en nul autre lieu de mesmes les rivers eit ladmiral conisance & auxint darest des niefs en les grantz flotz pur grantz viages du Roi & de Roialme sauvant au Roi toutz maneres forfaitures & profitz en provenantz Et eit ensement jurisdiction sur les dites flotz durantz les dites viages tantsoulement Sauvant toutdis as Seignurs citees & burghs lour libertees & franchises.

'manner of Cognizance, 'Power, nor Jurisdiction; but 'all such manner of Contracts, 'Pleas, and Quarrels, and all 'other Things rising within 'the Bodies of Counties, as 'well by Land as by Water, 'as afore, and also Wreck of 'the Sea, shall be tried, de- 'termined, discussed, and re- 'medied by the Laws of the 'Land, and not before nor by 'the Admiral, nor his Lieu- 'tenant in any wise. Never- 'theless, of the Death of a 'Man, and of a Maihem done 'in great Ships, being and 'hovering in the main Stream 'of great Rivers, only beneath 'the *Bridges* of the same 'Rivers nigh to the Sea, and 'in none other Places of the 'same Rivers, the Admiral 'shall have Cognizance, and 'also to arrest Ships in the 'great Flotes for the great 'Voyages of the King and of 'the Realm; saving always 'to the King all manner of 'Forfeitures and Profits there- of coming:' And he shall 'have also Jurisdiction upon 'the said Flotes, during the 'said Voyages only, saving 'always to the Lords, Cities, 'and Boroughs their Liberties 'and Franchises.'

No. 10. 15 Richard II. c. 3.

No. 11.

2 Henry IV. c. 11. — A Remedy for him who is wrongfully pursued in the Court of Admiralty.

No. 11. 2 Henry IV.

The Statute of 13 R. 2. st. 1. c. 5. confirmed, touching the Admiral's Jurisdiction.

ITEM come en lestatut fait a Westm' lan treszisme le dit Roy *Richard* entre autres choses soit contenuz qe les admiralx & leur deputees ne soy medlent deslors enavant de nulle chose faite deinz le Roialme mais soulement de

"ITEM, Whereas in the "Statute made at *West-* "*minster* the thirteenth Year "of the said King *Richard*, "amongst other Things it is "contained, That the Admi- "rals and their Deputies shall "not intermeddle from thence-

No. 11.
2 Henry IV.
c. 11.

"forth of any Thing done "within the Realm, but only "of a Thing done upon the "Sea, according as it hath "been duly used in the Time "of the noble King *Edward*, "Grandfather to the said King "*Richard*;" 'our said Lord 'the King will and granteth, 'That the said Statute be firmly 'ly holden and kept, and put 'in due Execution. And 'moreover, the same our Lord 'the King, by the Advice and 'Assent of the Lords Spiri'tual and Temporal, and at 'the Prayer of the said Com'mons, hath ordained and stab'lished, That as touching a 'Pain to be set upon the Ad'miral, or his Lieutenant, that 'the Statute and the Common 'Law be holden against them; 'and that he that feeleth him'self grieved against the Form 'of the said Statute, shall have 'his Action by Writ grounded 'upon the Case against him 'that doth so pursue in the 'Admiral's Court; and reco'ver his double Damages 'against the Pursuant; and the 'same Pursuant shall incur the 'Pain of ten Pounds to the 'King for the Pursuit so made, 'if he be attainted.'

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chose faite sur la meer solonc ce qad este duement usez en temps de noble Roy *Edward* Aiel le dit Roy *Richard* nostre dit Seigneur le Roy voet & grante qe le dit estatut soit fermement tenuz & gardez & mys en due execution. Et outre ce mesme nostre Seignur le Roy de ladvis & assent des Seignurs espirituelx & temporelx & al prier des ditz Communes ad ordeignez & establiz qe quant a peine mettre sur ladmirall ou son lieutenant qe lestatut & la commune loye soient tenuz devers eux & qe celuy qi soy sent greve encontre la fourme du dit estatut ait saction par brief foundu sur le cas envers celuy qensi pursue en la courte de ladmiraltee & recoevre ses damages devers mesme le pursuant au double & encourge mesme le pursuant la peine de xl. envers le Roy pur la pursuite en fait sil soit atteint

No. 12.

2 Henry V. st. 1, c. 3.—A Copy of the Libel in Spiritual Court shall be delivered.

No. 12.
2 Henry V.
st. 1. c. 3.

"ITEM, Forasmuch as di'vers of the King's liege "People be daily cited to ap"pear in the Spiritual Court "before Spiritual Judges, there "to answer to divers Persons, "as well of Things which "touch Freehold, Debt, Tres-

ITEM pur ceo qe diverses lieges nostre Seignur le Roy sont citez de jour en autre dapparoir en courte Christiene devaunt juges espirituelx a y respondre as diverses persones sibien des choses qe touchent frank tenement dette

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trespassez covenantz & autres des queux la conisance appertient al courte nostre Seignur le Roy come de matrimonie & testament & qant tielx persones issint citez appiergent & demandent un libell de ceo qe lour est surmys pur estre enformez a doner lour respons illoeqes ou autrement a purchacer brief nostre Seignur le Roy de prohibition selonc lour cas quell libell lour est denie par les ditz juges espirituelx al entent qe tielx persones ne serront mye par nulle tiel brief aidez encontre ley & as graundes damages de tielx persones issint empledez nostre dit Seignur le Roy del advis & assent suisditz & a la prier des ditz Communes ad ordeigne & establie qe a quelle heure la copie de la libell est grauntable par la ley qil soit graunte & livere a la partie sanz diffi-

No. 12. 2 Henry V. St. 1. c. 3.

" passes, Covenants, and other " Things whereof the Cognisance pertaineth to the Court " of our Lord the King, as of " Matrimony and Testament; " and when such Persons so " cited appear and demand a " Libel of that which against " them is surmised, to be informed to give their Answer " thereunto, or otherwise to " purchase a Writ of our Lord " the King, of Prohibition, " according to their Case, " which Libel to them is deni" ed by the said Spiritual " Judges, to the Intent that such " Persons should not be aided " by any such Writ, against " the Law, and to the great " Damage of such Persons so " impleaded;" 'Our said Lord ' the King, by the Advice and ' Assent of the Lords Spiritual ' and Temporal, and at the ' Request and Instance of the ' said Commons, hath ordain' ed and established, That at ' what Time the Libel is grant' able by the Law, that it may ' be granted and delivered to ' the Party without any Diffi' culty.'

No. 13.

23 Henry VIII. c. 9.—An Act that no Person shall be cited out of the Diocess where he or she dwelleth, except in certain Cases.

No. 13. 23 Henry VIII. c. 9.

'WHERE great Number of the King's Subjects, as well ' Men, Wives, Servants, as other the King's Subjects, dwelling in divers Dioceses of this Realm of *England*, ' and of *Wales*, heretofore have been at many Times called by ' Citations, and other Processes compulsory, to appear in the ' Arches Audience, and other high Courts of the Archbishops ' of this Realm, far from, and out of the Diocese where such ' Men, Wives, Servants, and other the King's Subjects been ' inhabitant and dwelling, and many Times to answer to sur' mised and feigned Causes, and Suits of Defamation, with-

No. 12.
23 Henry VIII. c. 9.

'holding of Tithes, and such other like Causes and Matters, 'which have been sued more for Malice, and for Vexation, 'than for any just Cause of Suit.

No Person shall be cited out of the Diocese where he dwelleth, but in certain Cases.

'II. And where Certificate hath been made by the Summoner, Apparator, or any such light literate Person, that the 'Party against whom any such Citation hath been awarded, 'hath been cited or summoned, and thereupon the same Party, 'so certified to be cited or summoned, hath not appeared ac'cording to the Certificate, the same Party therefore hath been 'excommunicated, or at the least suspended from all Divine 'Service; and thereupon, before that he or she could be absol'ved, hath been compelled, not only to pay the Fees of the 'Court whereunto he or she was so called by Citation, or other 'Process, amounting to the Sum of ij. s. or xx. d. at the least; 'but also to pay to the Summoner, Apparator, or other light 'literate Person, by whom he or she was so certified to be 'summoned, for every Mile being distant from the Place 'where he or she then dwelled, unto the same Court where'unto he or she was so cited or summoned to appear, ii. d. to 'the great Charge and Impoverishment of the King's Subjects, 'and to the great Occasion of Misbehaviour and misliving of 'Wives, Women, and Servants, and to the great Impairment 'and Diminution of their good Names and Honesties:' Be it therefore enacted by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That no Manner Person shall be from henceforth cited or summoned, or otherwise called to appear by himself, or herself, or by any Procurator, before any Ordinary, Archdeacon, Commissary, Official, or any other Judge Spiritual out of the Diocese, or peculiar Jurisdiction where the Person which shall be cited, summoned, or otherwise (as is aforesaid) called, shall be inhabiting and dwelling, at the Time of awarding, or going forth of the same Citation or Summons; except that it shall be for, in, or upon any of the Cases or Causes hereafter written; that is to say, for any Spiritual Offence or Cause committed or done, or omitted, forslewed, or neglected to be done, contrary to Right or Duty, by the Bishop, Archdeacon Commissary, Official, or other Persons having Spiritual Jurisdiction, or being a Spiritual Judge, or by any other Person or Persons within the Diocese, or other Jurisdiction, whereunto he or she shall be cited, or otherwise lawfully called to appear and answer.

III. And except also it shall be by or upon Matter or Cause of Appeal, or for other lawful Cause, wherein any Party shall find himself or herself grieved or wronged by the Ordinary Judge or Judges of the Diocese or Jurisdiction, or by any of his Substitutes, Officers or Ministers, after the Matter or Cause there first commenced, and begun to be shewed unto the Archbishop, or Bishop, or any other having peculiar Jurisdiction, within whose Province the Diocese or Place peculiar is; or in case that the Bishop, or other immediate Judge

or Ordinary dare not, nor will not convent the Party to be sued before him; or in case that the Bishop of the Diocese, or the Judge of the Place, within whose Jurisdiction, or before whom the Suit by this Act should be commenced and prosecuted, be Party directly or indirectly to the Matter or Cause of the same Suit; or in case that any Bishop, or any inferior Judge, having under him Jurisdiction in his own Right and Title, and by Commission, make Request, or Instance to the Archbishop, Bishop, or other superior Ordinary or Judge, to take, treat, examine, or determine the Matter before him, or his Substitutes, and that to be done in Cases only where the Law Civil or Canon doth affirm Execution of such Request, or Instance of Jurisdiction, to be lawful or tolerable: upon Pain of Forfeiture to every Person by any Ordinary, Commissary, Official, or Substitute, by Virtue of his Office, or at the Suit of any Person to be cited, or otherwise summoned, or called contrary to this Act, of double Damages and Costs for the Vexation in that Behalf sustained, to be recovered against any such Ordinary, Commissary, Archdeacon, Official, or other Judge, as shall award or make Process, or otherwise attempt or procure to do any Thing contrary to this Act, by Action of Debt, or Action upon the Case, according to the Course of the Common Law of this Realm in any of the King's High Courts, or in any other competent Temporal Court of Record, by original Writ of Debt, Bill, or Plaint; in which Action, no Protection, other than such as shall be made under the King's Great Seal, and signed with his Sign Manual, shall be allowed, neither any Wager of Law, nor Essoin shall be admitted; and upon Pain of Forfeiture for every Person so summoned, cited, or otherwise called (as is abovesaid) to answer before any Spiritual Judge out of the Diocese, or other Jurisdiction where the said Person so dwelleth, or is resident or abiding, *x. li.* Sterling; the one Half thereof to be to the King our Sovereign Lord, and the other Half to any Person that will sue for the same in any of the King's said Courts, or in any other the said Temporal Courts, by Writ, Information, Bill, or Plaint; in which Action no Protection shall be allowed, nor Wager of Law or Essoin shall be admitted.

The Forfeit of an Ordinary offending against the Purport of this Statute.

IV. Provided always, That it shall be lawful to every Archbishop of this Realm to call, cite, and summon any Person or Persons inhabiting or dwelling in any Bishop's Diocese within his Province, for Causes of Heresy, if the Bishop or other Ordinary immediate thereunto consent, or if that the same Bishop, or other immediate Ordinary or Judge do not his Duty in Punishment of the same.

V. Provided also, That this Act shall not extend in any wise to the Prerogative of the most Reverend Father in God the Archbishop of *Canterbury*, or any of his Successors, of or for calling any Person or Persons out of the Diocese where he or they be inhabiting, dwelling, or resident, for Probate of

Proviso for the Probate of Testaments in the Province of Canterbury.

No. 13.
23 Henry VIII. c. 9.

any Testament or Testaments; any Thing in this Act contained to the contrary notwithstanding.

The Fees for the Seal of a Citation.

VI. And be it further enacted by Authority aforesaid, That no Archbishop, nor Bishop, Ordinary, Official, Commissary, or any other Substitute or Minister of any of the said Archbishops, Bishops, Archdeacons, or other having any Spiritual Jurisdiction, at any Time from the Feast of *Easter* next coming, shall ask, demand, take, or receive of any of the King's Subjects, any Sum or Sums of Money for the Seal of any Citation, after the said Feast to be awarded or obtained, than only *iii. d.* Sterling, upon the Pains and Penalties before limited, contained, and expressed in this present Act, to be in like Form recovered, as is aforesaid.

Proviso for the Probate of Testaments in the Province of York.

VII. Provided always, That this Act be not in any wise hurtful or prejudicial to the Archbishop of *York*, nor to his Successors, of, for, or concerning Probate of Testaments within his Province and Jurisdiction, by Reason of any Prerogative; any Thing in this Act to the contrary thereof notwithstanding.

No. 14.

24 Henry VIII. c. 12. — For the Restraint of Appeals.

No. 14.
24 Henry VIII c. 12.

The Power, Pre-eminence, and Authority of the King of England.

'WHERE by divers sundry old authentick Histories and Chronicles, it is manifestly declared and expressed, 'that this Realm of *England* is an Empire, and so hath been 'accepted in the World, governed by one supreme Head and 'King, having the Dignity and Royal Estate of the Imperial 'Crown of the same; unto whom a Body politick, compact 'of all Sorts and Degrees of People, divided in Terms, and 'by Names of Spiritualty and Temporalty, been bounden 'and owen to bear, next to God, a natural and humble 'Obedience; he being also institute and furnished, by the 'Goodness and Sufferance of Almighty God, with plenary, 'whole, and entire Power, Preeminence, Authority, Prerogative and Jurisdiction, to render and yield Justice, and final 'Determination to all Manner of Folk, Resiants, or Subjects 'within this his Realm, in all Causes, Matters, Debates and 'Contentions, happening to occur, insurge or begin within 'the Limits thereof, without Restraint, or Provocation to any 'foreign Princes or Potentates of the World; the Body Spiritual whereof having Power, when any Cause of the Law 'Divine happened to come in question, or of Spiritual Learning, then it was declared, interpreted, and shewed by that 'Part of the said Body politick, called the Spiritualty, now 'being usually called the *English* Church, which always hath 'been reputed, and also found of that Sort, that both for 'Knowledge, Integrity and Sufficiency of Number, it hath 'been always thought, and is also at this Hour, sufficient and

The Power, Learning and Wisdom of the Body Spiritual.

No. 14. 24 Henry VIII, c. 12.

'meet of itself, without the intermeddling of any exterior 'Person or Persons, to declare and determine all such Doubts, 'and to administer all such Offices and Duties, as to their 'Rooms Spiritual doth appertain; for the due Administration 'whereof, and to keep them from Corruption and sinister 'Affection, the King's most noble Progenitors, and the 'Antecessors of the Nobles of this Realm, have suffi-'ciently endowed the said Church, both with Honour and 'Possessions; and the Laws Temporal, for Trial of Property 'of Lands and Goods, and for the Conservation of the Peo-'ple of this Realm in Unity and Peace, without Rapine or 'Spoil, was and yet is administred, adjudged and executed by 'sundry Judges and Ministers of the other Part of the said 'Body Politick, called the Temporalty; and both their Au-'thorities and Jurisdictions do conjoin together in the due 'Administration of Justice, the one to help the other.

'II. And whereas the King, his most noble Progenitors, 'and the Nobility and Commons of this said Realm, at divers 'and sundry Parliaments, as well in the Time of King *Ed-'ward* the first, *Edward* the third, *Richard* the second, *Henry* 'the fourth, and other noble Kings of this Realm, made sun-'dry Ordinances, Laws, Statutes, and Provisions for the en-'tire and sure Conservation of the Prerogatives, Liberties and 'Preeminences of the said Imperial Crown of this Realm, and 'of the Jurisdiction Spiritual and Temporal of the same, to 'keep it from the Annoyance as well of the See of *Rome*, as 'from the Authority of other foreign Potentates, attempting 'the Diminution or Violation thereof, as often, and from Time 'to Time, as any such Annoyance or Attempt might be known 'or espied: And notwithstanding the said good Statutes and 'Ordinances made in the Time of the King's most noble Pro-'genitors, in Preservation of the Authority and Prerogative of 'the said Imperial Crown, as is aforesaid; yet nevertheless 'sithen the making of the said good Statutes and Ordinances 'divers and sundry Inconveniencies and Dangers, not provid-'ed for plainly by the said former Acts, Statutes and Or-'dinances, have arisen and sprung by reason of Appeals sued 'out of this Realm to the See of *Rome*, in Causes Testa-'mentary, Causes of Matrimony and Divorces, Right of 'Tithes, Oblations and Obventions, not only to the great 'Inquietation, Vexation, Trouble, Costs and Charges of 'the King's Highness, and many of his Subjects and Resi-'ants of this his Realm, but also to the great Delay and Let to 'the true and speedy Determination of the said Causes, for so 'much as the Parties appealing to the said Court of *Rome* most 'commonly do the same for the Delay of Justice. And foras-'much as the great Distance of Way is so far out of this Realm, 'so that the necessary Proofs, nor the true Knowledge of the 'Cause, can neither there be so well known, ne the Witnesses 'there so well examined, as within this Realm, so that the 'Parties grieved by means of the said Appeals be most Times 'without Remedy:' In Consideration whereof, the King's Highness, his Nobles, and Commons, considering the great

The several Inconveniences in suing of Appeals to Rome.

No. 4.
24 Henry VIII. c. 12.

Enormities, Dangers, long Delays and Hurts, that as well to his Highness, as to his said Nobles, Subjects, Commons, and Resiants of this his Realm, in the said Causes Testamentary, Causes of Matrimony and Divorces, Tithes, Oblations and Obventions, do daily ensue, doth therefore by his Royal Assent, and by the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, enact, establish and ordain, That all Causes Testamentary, Causes of Matrimony and Divorces, Rights of Tithes, Oblations and Obventions (the Knowledge whereof by the Goodness of Princes of this Realm, and by the Laws and Customs of the same, appertaineth to the Spiritual Jurisdiction of this Realm) already commenced, moving, depending, being, happening, or hereafter coming in Contention, Debate or Question within this Realm, or within any the King's Dominions, or Marches of the same, or elsewhere, whether they concern the King our Sovereign Lord, his Heirs and Successors, or any other Subjects or Resiants within the same, of what Degree soever they be, shall be from henceforth heard, examined, discussed, clearly, finally, and definitively adjudged and determined within the King's Jurisdiction and Authority, and not elsewhere, in such Courts Spiritual and Temporal of the same, as the Natures, Conditions, and Qualities of the Cases and Matters aforesaid in Contention, or hereafter happening in Contention, shall require, without having any Respect to any Custom, Use, or Sufferance, in Hindrance, Let, or Prejudice of the same, or to any other Thing used or suffered to the contrary thereof by any other manner of Person or Persons in any manner of wise; any foreign Inhibitions, Appeals, Sentences, Summons, Citations, Suspensions, Interdictions, Excommunications, Restraints, Judgments, or any other Process or Impediments, of what Natures, Names, Qualities, or Conditions soever they be, from the See of *Rome*, or any other foreign Courts or Potentates of the World, or from and out of this Realm, or any other the King's Dominions, or Marches of the same, to the See of *Rome*, or to any other foreign Courts or Potentates, to the Let or Impediment thereof in any wise notwithstanding. And that it shall be lawful to the King our Sovereign Lord, and to his Heirs and Successors, and to all other Subjects or Resiants within this Realm, or within any of the King's Dominions, or Marches of the same, notwithstanding that hereafter it should happen any Excommengement, Excommunications, Interdictions, Citations, or any other Censures or foreign Process out of any outward Parts, to be fulminate, promulged, declared, or put in Execution within this said Realm, or in any other Place or Places, for any of the Causes before rehearsed, in Prejudice, Derogation, or Contempt of this said Act, and the very true Meaning and Execution thereof, may and shall nevertheless as well pursue, execute, have and enjoy the Effects, Profits, Benefits and Commodities of all such Processes, Sentences, Judgments and Determinations done, or hereafter to be done, in any of the said Courts Spiritual or Temporal, as

All Causes determinable by any Spiritual Jurisdiction shall be adjudged within the King's Authority.

No. 14.
24 Henry VIII. c. 24.

the Cases shall require, within the Limits, Power and Authority of this the King's said Realm, and Dominions and Marches of the same, and those only, and none other to take place, and to be firmly observed and obeyed within the same. As also, that all the spiritual Prelates, Pastors, Ministers and Curates within this Realm, and the Dominions of the same, shall and may use, minister, execute and do, or cause to be used, executed, ministered and done, all Sacraments, Sacramentals, Divine Services, and all other Things within the said Realm and Dominions, unto all the Subjects of the same, as Catholick and Christian Men owen to do; any former Citations, Processes, Inhibitions, Suspensions, Interdictions, Excommunications, or Appeals, for or touching the Causes aforesaid, from or to the See of *Rome*, or any other foreign Prince or foreign Courts, to the Let or contrary thereof in any wise notwithstanding.

The Prelates of this Realm may execute all Sacraments and Divine Service to the Subjects of this Realm.

III. And if any of the said spiritual Persons, by the Occasion of the said Fulminations of any of the same Interdictions, Censures, Inhibitions, Excommunications, Appeals, Suspensions, Summons, or other foreign Citations for the Causes beforesaid, or for any of them, do at any Time hereafter refuse to minister, or cause to be ministred, the said Sacraments and Sacramentals, and other Divine Services, in Form as is aforesaid, shall for every such Time or Times that they or any of them do refuse so to do, or cause to be done, have one Year's Imprisonment, and to make Fine and Ransom at the King's Pleasure.

The Penalty of them who omit to do their Duty.

IV. And it is further enacted by the Authority aforesaid, That if any Person or Persons inhabiting or resiant within this Realm, or within any of the King's said Dominions, or Marches of the same, or any other Person or Persons, of what Estate, Condition or Degree soever he or they be, at any Time hereafter, for or in any the Causes aforesaid, do attempt, move, purchase, or procure, from or to the See of *Rome*, or from or to any other foreign Court or Courts out of this Realm, any manner foreign Process, Inhibitions, Appeals, Sentences, Summons, Citations, Suspensions, Interdictions, Excommunications, Restraints, or Judgments, of what Nature, Kind or Quality soever they may be, or execute any of the same Process, or do any Act or Acts to the Let, Impediment, Hindrance or Derogation of any Process, Sentence, Judgment or Determination had, made, or done, or hereafter to be had, made or done, in any Courts of this Realm, or the King's said Dominions, or Marches of the same, for any of the Causes aforesaid, contrary to the true Meaning of this present Act, and the Execution of the same, that then every such Person or Persons so doing, and their Fautors, Comforters, Abettors, Procurers, Executors, and Counsellors, and every of them, being convict of the same, for every such Default shall incur and run in the same Pains, Penalties and Forfeitures, ordained and provided by the Statute of Provision, and *Præmunire*, made in the Sixteenth Year of the right noble Prince King *Richard* the Se-

Whosoever procureth from the See of Rome, &c any Appeals, Process, Sentences, &c incur the the Forfeiture of Premunire.

16 R. 2. c. 5.

No. 14.
24 Henry VIII. c. 12.

cond, against such as attempt, procure, or make Provision to the See of *Rome*, or elsewhere, for any Thing or Things, to the Derogation, or contrary to the Prerogative or Jurisdiction of the Crown and Dignity of this Realm.

V. And furthermore, in eschewing the said great Enormities, Inquietations, Delays, Charges and Expences hereafter to be sustained in pursuing of such Appeals, and foreign Process, for and concerning the Causes aforesaid, or any of them, do therefore by Authority aforesaid, ordain and enact, That in such Cases where heretofore any of the King's Subjects or Resiants have used to pursue, provoke, or procure any Appeal to the See of *Rome*, and in all other Cases of Appeals, in or for any of the Causes aforesaid, they may and shall from henceforth take, have and use their Appeals within this Realm, and not elsewhere, in Manner and Form as hereafter ensueth, and not otherwise; that is to say, first from the Archdeacon, or his Official, if the Matter or Cause be there begun, to the Bishop Diocesan of the said See, if in case any of the Parties be grieved.

Before whom and in what Courts Appeals shall be sued within this Realm.

VI. And in like wise if it be commenced before the Bishop Diocesan, or his Commissary, from the Bishop Diocesan, or his Commissary, within fifteen Days next ensuing the Judgment or Sentence thereof there given, to the Archbishop of the Province of *Canterbury*, if it be within his Province; and if it be within the Province of *York*, then to the Archbishop or *York*; and so likewise to all other Archbishops in other the King's Dominions, as the Case by Order of Justice shall require; and there to be definitively and finally ordered, decreed, and adjudged, according to Justice, without any other Appellation or Provocation to any other Person or Persons, Court or Courts.

Appeals ought to be within 15 Days.

VII. And if the Matter or Contention for any of the Causes aforesaid be or shall be commenced, by any of the King's Subjects or Resiants, before the Archdeacon of any Archbishop, or his Commissary, then the Party grieved shall or may take his Appeal within fifteen Days next after Judgment or Sentence there given, to the Court of the Arches, or Audience, of the same Archbishop or Archbishops; and from the said Court of the Arches or Audience, within fifteen Days then next ensuing after Judgment or Sentence there given, to the Archbishop of the same Province, there to be definitively and finally determined, without any other or further Process or Appeal thereupon to be had or sued.

Suits commenced before an Archbishop shall be determined by him without any further Appeal.

VIII. And it is further enacted by the Authority aforesaid, That all and every Matter, Cause and Contention now depending, or that hereafter shall be commenced by any of the King's Subjects or Resiants for any of the Causes aforesaid, before any of the said Archbishops, that then the same Matter or Matters, Contention or Contentions, shall be before the same Archbishop where the said Matter, Cause or Process shall be so commenced, definitively determined, decreed, or adjudged, without any other Appeal, Provocation,

or any other foreign Process out of this Realm, to be sued to the Let or Derogation of the said Judgment, Sentence or Decree, otherwise than is by this Act limited and appointed; saving always the Prerogative of the Archbishop and Church of *Canterbury*, in all the aforesaid Causes of Appeals, to him and to his Successors to be sued within this Realm, in such and like wise as they have been accustomed and used to have heretofore.

No. 14. 24 Henry VIII. c. 12.

The Prerogative of the Archbishop of Canterbury saved.

IX. And in case any Cause, Matter or Contention, now depending for the Causes before rehearsed, or any of them, or that hereafter shall come in Contention for any of the same Causes, in any of the foresaid Courts, which hath, doth, shall or may touch the King, his Heirs or Successors, Kings of this Realm; that in all and every such Case or Cases the Party grieved, as before is said, shall or may appeal from any of the said Courts of this Realm, where the said Matter, now being in Contention, or hereafter shall come in Contention, touching the King, his Heirs, or Successors (as is aforesaid) shall happen to be ventilate, commenced or begun, to the spiritual Prelates and other Abbots and Priors of the Upper House, assembled and convocate by the King's Writ in the Convocation being, or next ensuing within the Province or Provinces where the same Matter of Contention is or shall be begun; so that every such Appeal be taken by the Party grieved within fifteen Days next after the Judgment or Sentence thereupon given or to be given; and that whatsoever be done, or shall be done and affirmed, determined, decreed and adjudged by the foresaid Prelates, Abbots and Priors of the Upper House of the said Convocation, as is aforesaid, appertaining, concerning, or belonging to the King, his Heirs and Successors, in any of these foresaid Causes of Appeals, shall stand and be taken for a final Decree, Sentence, Judgment, Definition and Determination, and the same Matter, so determined, never after to come in Question and Debate, to be examined in any other Court or Courts.

Before who an Appeal shall be sued in any Case touching the King.

X. And if it shall happen any Person or Persons hereafter to pursue or provoke any Appeal contrary to the Effect of this Act, or refuse to obey, execute and observe all Things comprised within the same, concerning the said Appeals, Provocations and other foreign Processes to be sued out of this Realm, for any the Causes aforesaid, that then every such Person or Persons so doing, refusing, or offending contrary to the true Meaning of this Act, their Procurers, Fautors, Advocates, Counsellors, and Abettors, and every of them, shall incur into the Pains, Forfeitures and Penalties ordained and provided in the said Statute made in the said sixteenth Year of King *Richard* the Second, and with like Process to be made against the said Offenders, as in the same Statute made in the said sixteenth Year more plainly appeareth.

16 R. 2. c. 5.

No. 15.

D. 25 Henry VIII. c. 19.—The Submission of the Clergy and Restraint of Appeals.

No. 15. 25 Henry VIII. c. 19.

There shall be no Appeals to Rome, but Appeals shall be according to the Statute made 24 H. 8. c. 12.

III. AND be it further enacted by Authority aforesaid, That from the Feast of *Easter*, which shall be in the Year of our Lord God 1534, no manner of Appeals shall be had, provoked, or made out of this Realm, or out of any of the King's Dominions, to the Bishop of *Rome*, nor to the See of *Rome*, in any Causes or Matters happening to be in Contention, and having their Commencement and Beginning in any of the Courts within this Realm, or within any the King's Dominions, of what Nature, Condition or Quality soever they be of; but that all manner of Appeals, of what Nature or Condition soever they be of, or what Cause or Matter soever they concern, shall be made and had by the Parties aggrieved, or having Cause of Appeal, after such Manner, Form and Condition, as is limited for Appeals to be had and prosecuted within this Realm in Causes of Matrimony, Tythes, Oblations and Obventions, by a Statute thereof made and established sithen the Beginning of this present Parliament, and according to the Form and Effect of the said Estatute; any Usage, Custom, Prescription, or any Thing or Things to the contrary hereof notwithstanding.

Appeals from the Archbishop's Court into the Chancery.

IV. And for lack of Justice at or in any the Courts of the Archbishops of this Realm, or in any the King's Dominions, it shall be lawful to the Parties grieved to appeal to the King's Majesty in the King's Court of Chancery; and that upon every such Appeal, a Commission shall be directed under the Great Seal to such Persons as shall be named by the King's Highness, his Heirs or Successors, like as in case of Appeal from the Admiral's Court, to hear and definitively determine such Appeals, and the Causes concerning the same. Which Commissioners, so by the King's Highness, his Heirs or Successors, to be named or appointed, shall have full Power and Authority to hear and definitively determine every such Appeal, with the Causes and all Circumstances concerning the same; and that such Judgment and Sentence, as the said Commissioners shall make and decree, in and upon any such Appeal, shall be good and effectual, and also definitive; and no further Appeals to be had or made from the said Commissioners for the same.

Premunire for suing of Appeal to Rome, or executing any Process from thence.

V. And if any Person or Persons, at any Time after the said Feast of *Easter*, provoke or sue any Manner of Appeals, of what Nature or Condition soever they be of, to the said Bishop of *Rome*, or to the See of *Rome*, or do procure or execute any manner of Process from the See of *Rome*, or by Authority thereof, to the Derogation or Let of the due Execution of this Act, or contrary to the same, that then every such Person or Persons so doing, their Aiders, Counsellors and Abettors, shall incur and run into the Dangers, Pains and Penalties

contained and limited in the Act of Provision and *Præmunire* made in the sixteenth Year of the King's most noble Progenitor, King *Richard* the Second, against such as sue to the Court of *Rome* against the King's Crown and Prerogative Royal.

No. 15. 25 Henry VIII. c. 19.

VI. Provided always, That all manner of Provocations and Appeals hereafter to be had, made or taken from the Jurisdiction of any Abbots, Priors, or other Heads and Governors of Monasteries, Abbeys, Priories and other Houses and Places exempt, in such Cases as they were wont or might afore the making of this Act, by reason of Grants or Liberties of such Places exempt, to have or make immediately any Appeal or Provocation to the Bishop of *Rome*, otherwise called Pope, or to the See of *Rome*, that in all these Cases every Person and Persons, having Cause of Appeal or Provocation, shall and may take and make their Appeals and Provocations immediately to the King's Majesty of this Realm, into the Court of Chancery, in like Manner and Form as they used afore to do to the See of *Rome*; which Appeals and Provocations so made, shall be definitively determined by Authority of the King's Commission, in such Manner and Form as in this Act is abovementioned; so that no Archbishop or Bishop of this Realm shall intermit or meddle with any such Appeals, otherwise or in any other Manner than they might have done afore the making of this Act; any Thing in this Act to the contrary thereof notwithstanding.

Appeals from Places exempt, which were to the See of Rome, shall now be into the Chancery.

No. 16.

2 & 3 Edward 6. c. 13.—An Act for Payment of Tithes.* P.

No. 16. 2 and 3 Edward VI. c. 13.

XIII. AND be it further enacted by Authority aforesaid, That if any Person do substract or withdraw any manner of Tithes, Obventions, Profits, Commodities or other Duties before mentioned, or any Part of them, contrary to the true Meaning of this Act, or of any other Act heretofore made, that then the Party so substracting or withdrawing the same, may or shall be convented and sued in the King's Ecclesiastical Court, by the Party from whom the same shall be substracted or withdrawn, to the Intent the King's Judge Ecclesiastical shall and may then and there hear and determine the same according to the King's Ecclesiastical Laws: And that it shall not be lawful unto the Parson, Vicar, Proprietor, Owner or other their Farmers or Deputies, contrary to this Act, to convent or sue such Withholder of Tithes, Obventions and other Duties aforesaid, before any other Judge than Eccle-

Suits for withholding of Tithes shall be in the Ecclesiastical Court.

Excommunication of the Party condemned.

[* Inserted at large, P. II, Cl. 2, No. 6.—In Notes to 8 and 9 W. III. c. 11, ante. IV. XI. 8, this Statute was referred to as intended to be inserted in Class 22; but some Classes have been introduced which were not contemplated at the Time of printing that Note. In any future Edition the Notes will be added to the Act in Part II. and this Number will be omitted. The Notes are abriged from Hullock's Law of Costs, Ch. 4, Sec. 6.]

No. 16. 2 and 3 Edward VI. c. 13.

siastical. And if any Archbishop, Bishop, Chancellor or other Judge Ecclesiastical, give any Sentence in the foresaid Causes of Tithes, Obventions, Profits, Emoluments and other Duties aforesaid, or in any of them, (and no Appeal ne Prohibition hanging) and the Party condemned do not obey the said Sentence, that then it shall be lawful to every such Judge Ecclesiastical to excommunicate the said Party so as afore condemned and disobeying: In the which Sentence of Excommunication, if the said Party excommunicate wilfully stand and endure still excommunicate by the Space of forty Days next after, upon Denunciation and Publication thereof in the Parish Church, or the Place or Parish where the Party so excommunicate is dwelling or most abiding, the said Judge Ecclesiastical may then at his Pleasure signify to the King in his Court of Chancery, of the State and Condition of the said Party so excommunicate, and thereupon to require Process *De excommunicato capiendo* to be awarded against every such Person as hath been so excommunicate.

A Copy of the Libel shall be delivered to the Judges before a Prohibition granted.

XIV. Be it further enacted by the Authority aforesaid, That if any Party at any Time hereafter, for any Matter or Cause before rehearsed,(1) limited or appointed by this Act, to be sued or determined in the King's Ecclesiastical Court,(2) or before the Ecclesiastical Judge, do sue for any Prohibition in any of the King's Courts where Prohibitions before this Time have been used to be granted, that then in every such Case the same Party, before any Prohibition shall be granted to him or them, shall bring and deliver to the Hands of some of the Justices or Judges of the same Court where such Party demandeth the Prohibition, the very true Copy of the Libel depending in the Ecclesiastical Court, concerning the Matter wherefore the Party demandeth the Prohibition, subscribed or marked with the Hand of the same Party; and under the Copy of the said Libel shall be written the Suggestion wherefore the Party so demandeth the said Prohibition: And in case the said Suggestion, by two honest and sufficient(3) Witnesses at the least, be not proved true(4) in the Court(5) where the said Prohibition

A Consultation granted for Default of proving a Suggestion.

(1.) The first Section rehearses 27 H. VIII. c. 20. 32 H. VIII. c. 7.

(2.) All manner of Tithes and Offerings.—The Act extends to small Tithes; Foy *v.* Lister, 2 Salk. 554; 2 Ld. Raym. 1172.

(3.) Persons convicted of Felony are not sufficient; Brown *v.* Crashaw, 2 Bulstr. 154. Secus, as to Parishioners or interested Witnesses; Sharp *v.* Hobart, 4 Bac. Abr. 246. In Robson's Case, 1 Ventr. 107, it is said to be sufficient, where the Suggestion consists of two Parts, to produce one Witness to each.

(4.) The Proof must be made in all Cases where Matter suggested is mere Matter of Fact, as a Modus; Gippe's Case, Godb. 245; Pool *v.* Gardner, Carth. 463; of the Place being exempted as barren Ground; Stroud *v.* Hoskins, Cro. Car. 208; Thomas *v.* Gifford, 2 Str. 92; that the Lord had from Time immemorial received Tithes within the Manor, for which he had maintained a Chaplain; and the Proof did not shew the maintaining a Chaplain; Boocher *v.* Rogers, 1 Rol. Rep. 2; a Discharge by Arbitrament; Reynolls *v.* Hayes, 1 Ro. Rep. 55; a Discharge under 31 H. 8. c. 38; Congley *v.* Hale, 2 Ro. Rep. 125. Proof may be as to Belief; Bennett *v.* Snell, Palm. 377; Noy. 44; Litl. 155. It is sufficient if the Sug-

shall be so granted, (6) within six Months (7) next following after the said Prohibition shall be so granted and awarded, that then the Party that is letted or hindred of his or their Suit in the Ecclesiastical Court by such Prohibition, shall upon his or their Request and Suit, without Delay, have a Consultation granted (8) in the same Case in the Court where the said Prohibition was granted; and shall also recover double Costs (9) and Damages against the Party that so pursued the said Prohibition, the said Costs and Damages to be assigned or assessed by the Court where the said Consultation shall be so granted; (10) for which Costs and Damages the Party to whom they shall be awarded may have an Action of Debt (11) by Bill, Plaint or Information in any of the King's Courts of Record, wherein the Defendant shall not wage his or their Law, nor have any Essoin or Protection allowed or admitted.

No. 16. 2 and 3 Edward VI. c. 13.

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gestion is proved true in Substance, although not proved strictly as laid; or where the Suggestion was, that the Parson had 20 Acres of Pasture and 20 Acres of Wood in lieu of Tithes, and it was proved as to the Pasture and not as to the Wood; Andrew *v.* Pigot, Cro. Eliz. 736, Mo. 911. So if the Modus is laid on the Inhabitants of D. and proved to be paid by the Plaintiff; Anon. Noy, 28. So where there is a Proof of a Modus differing in Amount; Moore 911. Dyer 171, in Marg. Hetl. 100.

No Proof is necessary where the Suggestion is in the Negative; as, that the Parsonage is not appropriate—that the Lands are not in the Parish; or where the Suggestion is of Matter of Law; 2 Inst. 662; nor of a Composition or Agreement with the Parson; Woodward *v.* Bugg, 2 Leon, 29; 3 Leon. 257; Anon. Lit. 297; Tanner *v.* Small, Yelv. 102: nor of a Cause of Suggestion, arising upon a subsequent Statute; Wiggon *v.* Arscott, 2 Leon. 213: nor where two Matters are suggested, one of which requires Costs, the other not; as a Modus and an Agreement; semble Cobb *v.* Hunt, Yelv. 119; Brownlow 98; in which it was held, that the Party in such Case is not entitled to double Costs.

(5.) The Proof may be made before one of the Judges in Vacation, and recorded in Term; Skinner's Case, Latch 30. And see 15 East, 576.

(6.) Where the Party is put to declare in Prohibition, and is nonsuited, the Defendant is not entitled to double Costs under this Act, but only to single Costs under 8 and 9 W. III. c. 11; Trask *v.* French, 15 E. 574.

(7.) Calendar Months—being a Matter of Ecclesiastical Law; Lit 19. Hob. 179; 2 Mod. 58. It was held Mo. 573, that the six Months must be in Term-time; but this has been since overruled, and the Time runs from the Teste of the Writ of Prohibition; Foy *v.* Lister, 2 Salk. 554; 2 Ld. Raym. 1171. When the Declaration was by Rule of Court amended, to make it conformable to the Proceedings in the Spiritual Court, it was ruled that the Time should be computed from the Amendment; Malton *v.* Acklam, Barnes 428. If the Proof be defective, it may be amended within the six Months, but not after; Stiddar *v.* Tilar, Lit. 155.

(8.) A Consultation for not proving the Suggestion, is not, like a Consultation on the Merits, a Bar to a second Prohibition. See Carth. 463; Cro. Car. 208; Trask *v.* French, 15 East, 574.

(9.) Double Costs are only given for not proving the Suggestion, not for Variance between the Suggestion and the Libel; Hulton *v.* Barnes, Yelv. 79: and to obtain such Costs a Consultation must be awarded; Watkinson *v.* Pacy, Latch. 140; Hey 81. Whether the Act applies to Prohibition by an Administrated, in a Suit for Tithes, due by the Intestate; Dubit, Creake *v.* Pitcairne, Barnes 129; Cas. Prac. C. B. 157; Prac. Reg. 118.

(10.) The Court do not make the Payment of double Costs, &c. Part of the Rule: They follow of Course from the Consultation being awarded; Foy *v.* Lister, 2 Ld. Raym. 1172.

(11.) In such Action the Plaintiff is intitled to Costs; 1 Rol. Abr. 516. l. 37.

No. 16.
2 and 3 Edward VI c. 13.
Of what Things a Judge Ecclesiastical shall not hold Plea, 1 Ed. 3. stat. 2. c. 11.

XV. Provided always, and be it enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend to give any Minister or Judge Ecclesiastical any Jurisdiction to hold Plea of any Matter, Cause or Thing, being contrary or repugnant to or against the Effect, Intent or Meaning of the Statute of *Westminster* second, the fifth Chapter the Statutes of *Articuli cleri, Circumspecte agatis, Silva cædua,* the Treatise *De Regia prohibitione,* ne against the Statute of *Anno primo Edwardi tertii,* the tenth Chapter, or any of them, ne yet hold Plea in any Matter whereof the King's Court of Right ought to have Jurisdiction: any Thing herein contained to the contrary in any wise notwithstanding.

No. 17.

5 and 6 Edward VI. c. 4.—Against quarrelling and fighting in Churches and Church-yards.

No. 17.
5 and 6 Edward VI. c. 4.
The Penalty for striking or drawing a Weapon in a Church or Church-yard.

'FORASMUCH as of late divers and many outrageous and 'barbarous Behaviours and Acts have been used and 'committed by divers ungodly and irreligious Persons, by 'quarrelling, brawling, fraying and fighting openly in Chur'ches and Church-yards:' Therefore it is enacted by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person whatsoever shall, at any Time after the first Day of *May* next coming, by Words only, quarrel, chide or brawl in any Church or Church-yard, that then it shall be lawful unto the Ordinary of the Place where the same Offence shall be done, and proved by two lawful Witnesses, to suspend every Person so offending; that is to say, if he be a Layman, *ab ingressu Ecclesiæ,* and if he be a Clerk, from the Ministration of his Office, for so long Time as the said Ordinary shall by his Discretion think meet and convenient, according to the Fault.

The Penalty for smiting in a Church, &c.

II. And further it is enacted by the Authority aforesaid, That if any Person or Persons after the said first Day of *May,* shall smite or lay violent Hands upon any other, either in any Church or Church-yard, that then *ipso facto* every Person so offending shall be deemed excommunicate, and be excluded from the Fellowship and Company of Christ's Congregation.

The Penalty for drawing or smiting with a Weapon in the Church, &c.

III. And also it is enacted by the Authority aforesaid, That if any Person after the said first Day of *May* shall maliciously strike any Person with any Weapon in any Church or Church-yard, or after the same first Day of *May* shall draw any Weapon in any Church or Church-yard, to the Intent to strike another with the same Weapon, That then every Person so offending, and thereof being convicted by Verdict of xij. Men, or by his own Confession, or by two lawful Witnesses, before the Justices of Assise, Justices of *Oyer* and *Determiner,* or Justices of Peace in their Sessions, by Force of this Act, shall be adjudged by the same Justices before whom such Per-

son shall be convicted, to have one of his Ears cut off. And if the Person or Persons so offending have none Ears, whereby they should receive such Punishment as is before declared, that then he or they to be marked and burned in the Cheek with an hot Iron, having the Letter F. therein, whereby he or they may be known and taken for Fray-makers and Fighters; and besides that, every such Person to be and stand *ipso facto* excommunicated, as is aforesaid.

No. 17. 5 and 6 Edward VI. c. 4.

No. 18.

5 Elizabeth, c. 23.—An Act for the due Execution of the Writ *de Excommunicato Capiendo*.

No. 18. 5 Elizabeth, c. 23.

The Order of awarding and returning the Writ of Excommunicato capiendo: What is to be done upon the Party's Appearance, and what if he cannot be found, and the Cause of awarding this Writ.

'FORASMUCH as divers Persons offending in many great 'Crimes and Offences appertaining merely to the Jurisdiction and Determination of the Ecclesiastical Courts and 'Judges of this Realm are many Times unpunished for lack 'and want of the good and due Execution of the Writ *de Excommunicato Capiendo*, directed to the Sheriff of any County, for the Taking and Apprehending of such Offenders: The great Abuse whereof, as it should seem, hath grown for that 'the said Writ is not returnable into any Court that might have 'the Judgment of the well-executing and serving of the said 'Writ according to the Contents thereof; but hitherto have 'been left only to the Discretion of the Sheriffs and their Deputies, by whose Negligences and Defaults for the most part 'the said Writ is not executed upon the Offenders as it ought 'to be: By Reason whereof such Offenders be greatly encouraged to continue their sinful and criminous Life, much 'to the Displeasure of Almighty God, and to the great Contempt of the Ecclesiastical Laws of this Realm:'

Awarding and returning of Excommunicato capiendo.

II. Wherefore for the Redress thereof, Be it enacted by the Queen's most Excellent Majesty, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *May* next coming, every Writ of *Excommunicato Capiendo* that shall be granted and awarded out of the High Court of Chancery, against any Person or Persons within the Realm of *England*, shall be made in the Time of the Term, and returnable before the Queen's Highness, her Heirs and Successors, in the Court commonly called the King's Bench, in the Term next after the *Teste* of the same Writ; and that the same Writ shall be made to contain at the least twenty Days between the *Teste* and the Return thereof: And after the same Writ shall be so made and sealed, that then the said Writ shall be forthwith brought into the said Court of King's Bench, and there, in the Presence of the Justices, shall be opened and delivered of Record to the Sheriff or other Officer to whom the Serving and Execution thereof shall appertain, or to his or their Deputy or Deputies: And if afterwards it shall or may appear to the Justices of the same Court for the Time being, that the same Writ so de-

No. 18. 5 Elizabeth, c. 23.

The Sheriff shall be amerced for not returning of the Writ.

livered of Record be not duly returned before them at the Day of the Return thereof, or that any other Default or Negligence hath been used or had in the not well serving and executing of the said Writ; that then the Justices of the said Court shall and may, by Authority of this Act, assess such Amerciament upon the said Sheriff or other Officer in whom such Default shall appear, as to the Discretion of the said Justices shall be thought meet and convenient; which Amerciament so assessed shall be estreated into the Court of Exchequer, as other Amerciaments have been used.

What shall be done with the Body of the Excommunicate.

III. And be it further enacted by the Authority aforesaid, That the Sheriff or other Officer to whom such Writ of *Excommunicato Capiendo*, or other Process by Virtue of this Act shall be directed, shall not in any wise be compelled to bring the Body of such Person or Persons as shall be named in the said Writ or Process, into the said Court of the King's Bench, at the Day of the Return thereof; but shall only return the same Writ and Process thither, with Declaration briefly how and in what Manner he hath served and executed the same, to the Intent that thereupon the said Justices may then further therein proceed, according to the Tenor and Effect of this present Act.

If the Sheriff return non est inventus.

IV. And if the said Sheriff or other Officer to whom the Execution of the said Writ shall so appertain, do or shall return that the Party or Parties named in the said Writ cannot be found within his Bailiwick; that then the said Justices of the King's Bench for the Time being, upon every such Return, shall award one Writ of *Capias* against the said Person or Persons named in the said Writ of *Excommunicato Capiendo*, returnable in the same Court in the Term-time, two Months at least next after the *Teste* thereof, with a Proclamation to be contained within the said Writ of *Capias*, that the Sheriff or other Officer to whom the said Writ shall be directed, in the full County Court, or else at the General Assizes and Gaol-delivery to be holden within the said County, or at a Quarter-Sessions to be holden before the Justices of the Peace within the said County, shall make open Proclamation ten Days at the least before the Return, that the Party or Parties named in the said Writ shall, within six Days next after such Proclamation, yield his or their Body or Bodies to the Gaol or Prison of the said Sheriff or other such Officer, there to remain as a Prisoner, according to the Tenor and Effect of the first Writ of *Excommunicato Capiendo*, upon Pain of Forfeiture of ten Pounds: And thereupon after such Proclamation had, and the said six Days passed and expired, then the said Sheriff or other Officer to whom such Writ of *Capias* shall be directed, shall make Return of the same Writ of *Capias* into the said Court of the King's Bench, of all that he hath done in the Execution thereof, and whether the Party named in the said Writ, have yielded his Body to Prison or not.

First Capias.

Ten Pounds Forfeiture for not appearing

V. And if upon the Return of the said Sheriff it shall appear, that the Party or Parties named in the same Writ of *Capias*, or any of them, have not yielded their Bodies to the

Gaol and Prison of the said Sheriff or other Officer according to the Effect of the same Proclamation; that then every such Person that so shall make Default, shall for every such Default forfeit to the Queen's Highness, her Heirs and Successors, ten Pounds; which shall likewise be estreated by the said Justices into the said Court of Exchequer, in such Manner and Form as Fines and Amerciaments there taxed and assessed are used to be.

No. 14. 5 Elizabeth, c. 23. upon the first Capias.

VI. And thereupon the said Justices of the King's Bench shall also award forth one other Writ of *Capias* against the Person or Persons that so shall be returned to have made Default, with such like Proclamation as was contained in the first *Capias*, and a Pain of twenty Pounds, to be mentioned in the said second Writ and Proclamation: And the Sheriff or other Officer to whom the said Writ of second *Capias* shall be so directed, shall serve and execute the said second Writ in such like Manner and Form as before is expressed for the Serving and Executing of the said first Writ of *Capias*. And if the Sheriff or other Officer shall return upon the said second *Capias*, that he hath made the Proclamation according to the Tenor and Effect of the same Writ, and that the Party hath not yielded his Body to Prison according to the Tenor of the said Proclamation, that then the said Party that so shall make Default, shall for such his Contempt and Default forfeit to the Queen's Highness, her Heirs and Successors, the Sum of twenty Pounds; which said Sum of twenty Pounds the said Justices of the King's Bench for the Time being shall likewise cause to be estreated into the said Court of Exchequer, in Manner and Form aforesaid.

2d. Capias.

Twenty Pound Forfeiture upon the second Capias.

VII. And then the said Justices shall likewise award forth one other Writ of *Capias* against the said Party with such like Proclamation and Pain of Forfeiture, as was contained in the said second Writ of *Capias*. And the Sheriff or other Officer to whom the said third Writ of *Capias* shall be so directed, shall serve and execute the said third Writ of *Capias* in such like Manner and Form as before in this Act is expressed and declared for the Serving and Executing of the said first and second Writs of *Capias*. And if the Sheriff or other Officer to whom the Execution of the said third Writ shall appertain, do make return of the said third Writ of *Capias*, that the Party upon such Proclamation hath not yielded his Body to Prison according to the Tenor thereof; that then every such Party for every such Contempt and Default shall likewise forfeit to the Queen's Majesty, her Heirs and Successors, other xx. li. which Sum of xx. li. shall likewise be estreated into the said Court of the Exchequer in Manner and Form aforesaid: And thereupon the said Justices of the King's Bench shall likewise award forth one Writ of *Capias* against the said Party, with like Proclamation and like Pain of Forfeiture of xx. li. And that also the said Justices shall have Authority by this Act, infinitely to award such Process of *Capias* with such like Proclamation and Pain of Forfeiture of xx. li. as is before limited, against the said Party that so shall make Default in yielding of his Body to the

3d. Capias.

Twenty Pound Forfeiture upon the third Capias.

Awarding of Capias infinitely, and xx. li. Forfeit upon every of them.

No. 18. 5 Elizabeth, c. 23.

Prison of the Sheriff, until such Time as by Return of some of the said Writs before the said Justices it shall and may appear, that the said Party hath yielded himself to the Custody of the said Sheriff or other Officer, according to the Tenor of the said Proclamation; and that the Party upon every Default and Contempt by him made against the Proclamation of any of the said Writs so infinitely to be awarded against him, shall incur like Pain and Forfeiture of xx. li. which shall likewise be estreated in Manner and Form aforesaid.

The Offender yielding his Body shall be committed to Prison.

VIII. And be it further enacted by the Authority aforesaid, That when any Person or Persons shall yield his or their Body or Bodies to the Hands of the Sheriff or other Officer, upon any of the said Writs of *Capias*, that then the same Party or Parties that shall so yield themselves, shall remain in the Prison and Custody of the said Sheriff or other Officer, without Bail, Baston or Mainprize, in such like Manner and Form, to all Intents and Purposes, as he or they should or ought to have done, if he or they had been apprehended and taken upon the said Writ of *Excommunicato Capiendo*.

The Forfeiture of a Sheriff for a false Return.

IX. And be it further enacted by the Authority aforesaid, That if any Sheriff or other Officer by whom the said Writ of *Capias* or any of them shall be returned, as is aforesaid, do make an untrue Return upon any of the said Writs, that the Party named in the said Writs hath not yielded his Body upon the said Proclamations, or any of them, where indeed the Party did yield himself according to the Effect of the same, That then every such Sheriff or other Officer, for every such false and untrue Return shall forfeit to the Party grieved and damnified by the said Return, the Sum of forty Pounds; for the which Sum of forty Pounds the said Party grieved shall have his Recovery and due Remedy by Action of Debt, Bill, Plaint or Information, in any of the Queen's Courts of Record; in which Action, Bill, Plaint or Information, no Essoin, Protection or Wager of Law shall be admitted or allowed for the Party Defendant:

The Bishop's Authority to receive Submission, and deliver the Excommunicate.

X. Saving and reserving to all Archbishops and Bishops, and all others having Authority to certify any Person excommunicated, like Authority to accept and receive the Submission and Satisfaction of the said Person so excommunicated, in Manner and Form heretofore used, and him to absolve and release, and the same to signify, as heretofore hath been accustomed, to the Queen's Majesty, her Heirs and Successors, into the High Court of Chancery; and thereupon to have such Writs for the Deliverance of the said Person, so absolved and released, from the Sheriff's Custody or Prison, as heretofore they or any of them had, or of Right ought or might have had; any Thing in this present Statute specified or contained to the contrary hereof in any wise notwithstanding.

Process out of Liberties where the Queen's Writ runneth not.

XI. Provided always, That in *Wales*, the Counties Palatines of *Lancaster*, *Chester*, *Durham* and *Ely*, and in the Cinque Ports, being Jurisdictions and Places exempt, where the Queen's Majesty's Writ doth not run, and Process of *Ca-*

No. 18. 5 Elizabeth, c. 23.

pias from thence not returnable into the said Court of the King's Bench, after any *Significavit* being of Record in the said Court of Chancery, the Tenor of such *Significavit* by *Mittimus* shall be sent to such of the Head Officers of the said County of *Wales*, Counties Palatines, and Places exempt, within whose Offices, Charge or Jurisdiction the Offenders shall be resiant; that is to say, to the Chancellor or Chamberlain for the said County Palatine of *Lancaster*, and *Chester*, and for the Cinque Ports to the Lord Warden of the same, and for *Wales* and *Ely*, and the County Palatine of *Durham*, to the Chief Justice or Justices there: And thereupon every of the said Justices and Officers to whom such Tenor of *Significavit* with *Mittimus* shall be directed and delivered, shall by Virtue of this Estatute have Power and Authority to make like Process to the inferior Officer and Officers to whom the Execution of Process there doth appertain, returnable before the Justices there at their next Sessions or Courts, two Months at the least after the Teste of every such Process: So always as in every Degree they shall proceed in their Sessions and Courts against the Offenders, as the Justices of the said Court of King's Bench are limited by the Tenor of this Act in Term-Times to do and execute.

Certain Persons discharged of the Penalty aforesaid.

XII. Provided also, and be it enacted, That any Person, at the Time of any Process of *Capias* afore-mentioned awarded, being in Prison, or out of this Realm in the Parts beyond the Sea, or within Age, or of *non sanæ memoriæ*, or Woman Covert, shall not incur any of the Pains or Forfeitures aforementioned, which shall grow by any Return or Default happening during such Time of Nonage, Imprisonment, being beyond the Sea, or *non sanæ memoriæ:* And that by Virtue of this Estatute, the Party grieved may plead every such Cause or Matter in Bar of and upon the Distress, or other Process that shall be made for levying of any of the said Pains or Forfeitures.

Addition according to the st. 1 H. 5. c. 5

XIII. And that if the Offender against whom any such Writ of *Excommunicato capiendo* shall be awarded, shall not in the same Writ of *Excommunicato capiendo* have a sufficient and lawful Addition, according to the Form of the Statute of *Primo* of *Henry* the Fifth, in Cases of certain Suits whereupon Process of Exigent are to be awarded: Or if in the *Significavit* it be not contained, that the Excommunication doth proceed upon some Cause or Contempt of some original Matter of Heresy, or refusing to have his or their Child baptized, or to receive the Holy Communion as it is now commonly used to be received in the Church of *England*, or to come to Divine Service now commonly used in the said Church of *England*, or Error in Matters of Religion or Doctrine now received and allowed in the said Church of *England*, Incontinency, Usury, Simony, Perjury in the Ecclesiastical Court, or Idolatry; That then all and every Pains and Forfeitures limited against such Persons excommunicate by this Estatute, by reason of such Writ of *Excommunicato capiendo* wanting

Causes of Excommunication.

No. 18. 5 Elizabeth, c. 23.

sufficient Addition, or of such *Significavit* wanting all the Causes aforementioned, shall be utterly void in Law; and by way of Plea to be allowed to the Party grieved.

Addition with a Nuper.

XIV. And if the Addition shall be with a *Nuper* of the Place, Then in every such Case, at the awarding of the first *Capias* with Proclamation according to the Form aforementioned, one Writ of Proclamation (without any Pain expressed) shall be awarded into the County where the Offender shall be most commonly resiant at the Time of the awarding of the said first *Capias* with Pain in the same Writ of Proclamation, to be returnable the Day of the Return of the said first *Capias* with Pain, and Proclamation thereupon at some one such Time and Court, as is prescribed for the Proclamation upon the said first *Capias* with Pain: And if such Proclamation be not made in the County where the Offender shall be most commonly resiant in such Cases of Additions of *Nuper*, That then such Offender shall sustain no Pain or Forfeiture by Virtue of this Estatute, for not yielding his or her Body, according to the Tenor aforementioned; any Thing before specified to the contrary hereof in any wise notwithstanding.

No. 19.

8 Elizabeth, c. 5.—For the avoiding of tedious Suits in Civil and Marine Causes.

No. 19. 8 Elizabeth, c. 5.

A Sentence definitive in a Civil and Marine Cause by Delegates appointed by Commission shall be final.

'FOR the avoiding as well of long and tedious Suits, as also 'of great Charges and Expences in prosecuting of Civil 'and Marine Causes by reason of divers Appeals permitted 'to be made by Order of the Laws Civil in such Causes, and 'to the Intent that as well Strangers, as also others the Subjects 'of this Realm, that shall have Cause of Suit in those Matters, 'may have such Expedition in the same as their Natures and 'Qualities do require,' Be it enacted by the Queen's Majesty our Sovereign Lady, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from the last Day of this present Session of Parliament, all and every such Judgment and Sentence definitive, as shall be given or pronounced in any Civil and Marine Cause, upon Appeal lawfully to be made therein to the Queen's Majesty in her Highness Court of Chancery, by such Commissioners or Delegates as shall be nominated and appointed by her Majesty, her Heirs or Successors, by Commission under the Half Seal, as it hath been heretofore used in such Cases, shall be final, and no further Appeal to be had or made from the said Judgment or Sentence definitive, or from the said Commissioners or Delegates, for or in the same; any Law, Usage or Custom to the contrary notwithstanding.(1.)

(1.) Notwithstanding this Act, there may still be a Commission of Review at the discretion of the Crown. The Application is referred to the Lord Chancellor, who hears the Arguments of Counsel and Civilians, sitting in his

No. 20.

27 George III. c. 44.—An Act to prevent frivolous and vexatious Suits in Ecclesiastical Courts.

No. 20. 27 George III. c. 44.

Preamble.

'WHEREAS it is expedient to limit the Time for the 'Commencement of certain Suits in the Ecclesiasti-'cal Courts:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *August* one thousand seven hundred and eighty-seven, no Suit for defamatory Words shall be commenced in any of the Ecclesiastical Courts within *England, Wales,* or the Town of *Berwick upon Tweed,* unless the same shall be commenced within six Calendar Months from the Time when such defamatory Words shall have been uttered.

Suits in Ecclesiastical Courts for defamatory Words to be commenced within six Months.

II. And be it further enacted by the Authority aforesaid, That no Suit shall be commenced in any Ecclesiastical Court, for Fornication, or Incontinence, or for striking or brawling in any Church or Church-yard, after the Expiration of eight Calendar Months from the Time when such Offence shall have been committed; nor shall any Prosecution be commenced or carried on for Fornication at any Time after the Parties offending shall have lawfully intermarried.

Limitation of Suits in Ecclesiastical Courts.

No. 21.

53 George III. c. 127.—An Act for the better Regulation of Ecclesiastical Courts in *England;* and for the more easy Recovery of Church Rates and Tithes. [12*th. July* 1813.]

No. 21. 53 George III. c. 127.

'WHEREAS it is expedient that Excommunication, to-'gether with all Proceedings following thereupon, 'should, saving in certain Cases, be discontinued, and that 'other Proceedings should be substituted in lieu thereof; and 'that certain other Regulations should be made in the Proceed-'ings of the Ecclesiastical Courts; and that more convenient 'modes of recovering Tithes and Church Rates in certain cases 'should be provided;' Be it therefore enacted by the King's

own Court. The Ground on which the Power of granting such a Commission is supported is, that it was formerly granted by the Pope; and such Authority as the Pope formerly exerted is now, by Statutes 26 Hen. VIII. c. 1, 1 Eliz. c. 1. annexed to the Crown. See 3 Bl. Com. 67. The only modern Cases in which I am aware of such Commission being applied for, are Matthews *v.* Warner, 4 Ves. 181; Eagleton *v.* Kingston, 8 Ves. 438. In the former it was granted, in the latter refused. In these Cases a perspicuous View is taken of the Ground upon which the Commission should be granted or withheld.

No. 21. 53 George III. c. 127.

Excommunication discontinued, except in certain cases.

Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, Excommunication, together with all Proceedings following thereupon, shall in all cases, save those hereafter to be specified, be discontinued, throughout that Part of the United Kingdom of *Great Britain* and *Ireland* called *England*; and that in all Causes which according to the Laws of this Realm are cognizable in the Ecclesiastical Courts, when any Person or Persons having been duly cited to appear in any Ecclesiastical Court, or required to comply with the lawful Orders or Decrees, as well final as interlocutory, of any such Court, shall neglect or refuse to appear, or neglect or refuse to pay Obedience to such lawful Orders or Decrees, or when any Person or Persons shall commit a Contempt in the Face of such Court, no Sentence of Excommunication shall be given or pronounced; saving in the particular cases hereafter to be specified; but instead thereof, it shall be lawful for the Judges or Judge who issued out the Citation, or whose lawful Orders or Decrees have not been obeyed, or before whom such Contempt in the Face of the Court shall have been committed, to pronounce such Person or Persons contumacious and in contempt, and within Ten Days to signify the same in the Form to this Act annexed, to His Majesty in Chancery, as hath heretofore been done in signifying Excommunications; and thereupon a Writ *de Contumace Capiendo*, in the Form to this Act annexed, shall issue from the Court of Chancery, directed to the same Persons to whom the Writs *de Excommunicato Capiendo* have heretofore been directed; and the same shall be returnable in like manner as the Writ *de Excommunicato Capiendo* hath been by Law returnable heretofore, and shall have the same Force and Effect as the said Writ; and all Rules and Regulations not hereby altered, now by Law applying to the said Writ and the Proceedings following thereupon, and particularly the several Provisions contained in a certain Act passed in the Fifth Year of Queen *Elizabeth*, intituled "An Act for the due Execution of the Writ *de Excommunicato Capiendo*," shall extend and be applied to the said Writ *de Contumace Capiendo* and the Proceedings following thereupon, as if the same were herein particularly repeated and enacted; and the proper Officers of the said Court of Chancery are hereby authorized and required to issue such Writ *de Contumace Capiendo* accordingly; and all Sheriffs, Gaolers and other Officers are hereby authorized and required to execute the same, by taking and detaining the Body of the Person against whom the said Writ shall be directed to be executed; and upon the due Appearance of the Party so cited and not having appeared as aforesaid, or the Obedience of the Party so cited and not having obeyed as aforesaid, or the due Submission of the Party so having committed a Contempt in the Face of the Court, the Judges or Judge of such Ecclesiastical Court shall pronounce such Party absolved from

Same as in Writ de Excommunicato Capiendo.

5 El. c. 23.

No. 21. 53 George III. c. 127.

the Contumacy and Contempt aforesaid, and shall forthwith make an Order upon the Sheriff, Gaoler or other Officer in whose Custody he shall be, in the Form to this Act annexed, for discharging such Party out of Custody, and such Sheriff, Gaoler or other Officer shall, on the said Order being shewn to him, so soon as such Party shall have discharged the Costs lawfully incurred by reason of such Custody and Contempt, forthwith discharge him.

In what Cases Excommunication shall continue.

II. Provided always, and be it further enacted, That nothing in this Act contained shall prevent any Ecclesiastical Court from pronouncing or declaring Persons to be Excommunicate in definitive Sentences, or in interlocutory Decrees having the Force and Effect of definitive Sentences, such Sentences or Decrees being pronounced as Spiritual Censures for Offences of Ecclesiastical Cognizance, in the same manner as such Court might lawfully have pronounced or declared the same, had this Act not been passed.

Proceedings in case of Excommunication.

III. And be it further enacted, That no Person who shall be so pronounced or declared Excommunicate, shall incur any Civil Penalty or Incapacity whatever, in consequence of such Excommunication, save such Imprisonment, not exceeding Six Months, as the Court pronouncing or declaring such Person Excommunicate shall direct, and in such case the said Excommunication, and the Term of such Imprisonment, shall be signified or certified to His Majesty in Chancery, in the same manner as Excommunications have been heretofore signified, and thereupon the Writ *de Excommunicato Capiendo* shall issue, and the usual Proceedings shall be had, and the Party being taken into Custody shall remain therein for the Term so directed, or until he shall be absolved by such Ecclesiastical Court.

7 & 8 W. 3. c. 6. § 1.

'IV. And whereas in the Seventh and Eighth Years of 'King *William* the Third an Act was made and passed, inti'tuled "An Act for the more easy Recovery of Small Tithes," whereby, amongst other things therein enacted, Two or more of His Majesty's Justices of the Peace are authorized and required to hear and determine Complaints touching Tithes, Oblations and Compositions substracted or withheld, not exceeding Forty Shillings: And whereas it has become expedient to enlarge such Amount, and also to extend the said Act to all Tithes whatsoever of certain limited Amount;' Be it enacted, That such Justices of the Peace shall, from and after the passing of this Act, be authorised and required to hear and determine all Complaints touching Tithes, Oblations and Compositions substracted or withheld, where the same shall not exceed Ten Pounds in Amount from any one Person, in all such cases, and by all such means, and subject to all such Provisions and Remedies, by Appeal or otherwise, as contained in the said Act of King *William*, touching Small Tithes, Oblations and Compositions not exceeding Forty Shillings: Provided always nevertheless, that, from and after the passing of this Act, One Justice of the Peace shall be compe-

Justices of Peace may determine Complaints respecting Tithes not exceeding Ten Pounds.

No. 21. 53 George III. c. 127.

tent to receive the original Complaint, and to summon the Parties to appear before Two or more Justices of the Peace, as in the said Act is set forth.

Limitation of Actions respecting Tithes.

V. And be it further enacted, That, from and after the passing of this Act, no Action shall be brought for the Recovery of any Penalty for the not setting out Tithes, nor any Suit instituted in any Court of Equity, or in any Ecclesiastical Court, to recover the Value of any Tithes, unless such Action shall be brought or such Suit commenced within Six Years from the Time when such Tithes became due.

7 & 8 W. 3. c. 34 § 4. and 1 G. 1. st. 2. c. 6. § 2.

'VI. And whereas in the Seventh and Eighth Years of 'King *William* the Third an Act was made and passed, intituled "An Act that the solemn Affirmation and Declaration of 'the People called *Quakers* shall be accepted instead of an Oath 'in the usual Form," whereby, among other things, it is therein 'enacted, where any Quaker shall refuse to pay for or compound for his great or small Tithes, or to pay any Church 'Rates, Two or more of His Majesty's Justices of the Peace 'are authorized to hear and determine the same, not exceeding the Value of Ten Pounds: And whereas by a Statute 'made and passed in the First Year of King *George* the First 'the said Act is extended to other Objects: And whereas it is 'become expedient to enlarge the said Sum;' Be it enacted, That, from and after the passing of this Act, all the Provisions of the said Acts of King *William* and King *George* shall be deemed and taken to extend to any Value not exceeding Fifty Pounds: Provided always nevertheless, that, from and after the passing of this Act, One Justice of the Peace shall be competent to receive the original Complaint, and to summon the Parties to appear before Two or more Justices of the Peace, as in the said Act is set forth.

as to Quakers neglecting to pay Tithes, &c. extended.

Recovery of Church or Chapel Rates.

'VII. And whereas it is expedient that Church Rates or 'Chapel Rates of limited Amount, unduly refused or withheld, 'should in certain cases be more easily and speedily recovered;' Be it enacted, That, from and after the passing of this Act, if any one duly rated to a Church Rate or Chapel Rate, the Validity whereof has not been questioned in any Ecclesiastical Court, shall refuse or neglect to pay the same Sum at which he is so rated, it shall and may be lawful for any One Justice of the Peace of the same County, Riding, City, Liberty or Town Corporate, where the Church or Chapel is situated, in respect whereof such Rate shall have been made, upon the Complaint of any Churchwarden or Churchwardens, Chapelwarden or Chapelwardens, who ought to receive and collect the same, by Warrant under the Hand and Seal of such Justice, to convene before any two or more such Justices of the Peace any Person so refusing or neglecting to pay such Rate, and to examine upon Oath (which Oath the said Justices are hereby empowered to administer) into the Merits of the said Complaint, and by Order under their Hands and Seals to direct the Payment of what is due and payable in respect to such Rate, so as the Sum ordered and directed to be paid as aforesaid do

No. 21. 53 George III c. 127.

not exceed Ten Pounds, over and above the reasonable Costs and Charges, to be ascertained by such Justices; and upon Refusal or Neglect of such Party to pay according to such Order, it shall and may be lawful for any One of such Justices, by Warrant under his Hand and Seal, to levy the Money thereby ordered to be paid, together with the Amount of such Costs and Charges, by Distress and Sale of the Goods of such Offender, his Executors or Administrators, rendering only the Overplus to him or her, the necessary Charges of distraining being thereout first deducted and allowed by the said Justices; and any Person finding him or herself aggrieved by any Judgment given by Two or more such Justices, may appeal to the next General Quarter Sessions to be held for the County, Riding, City, Liberty or Town Corporate wherein the Church or Chapel is situated, in respect whereof such Rate shall have been made, and the Justices of the Peace there present, or the major part of them, shall proceed finally to hear and determine the Matter, and to reverse the said Judgment if they shall see Cause; and if the Justices then present, or the major part of them, shall find cause to affirm the Judgment given by the first Two or more Justices, the same shall be decreed by Order of Sessions, with Costs, against the Appellant, to be levied by Distress and Sale of the Goods and Chattels of the said Party Appellant: Provided always, that in case any such Appeal be made as aforesaid, no Warrant of Distress shall be granted until after such Appeal be determined: Provided also, that nothing herein contained shall extend to alter or interfere with the Jurisdiction of the Ecclesiastical Courts to hear and determine Causes touching the Validity of any Church Rate or Chapel Rate, or from proceeding to enforce the Payment of any such Rate, if the same shall exceed the Sum of Ten Pounds from the Party proceeded against: Provided likewise, that if the Validity of such Rate, or the Liability of the Person from whom it is demanded to pay the same, be disputed, and the Party disputing the same give Notice thereof to the Justices, the Justices shall forbear giving Judgment thereupon, and the Person or Persons demanding the same may then proceed to the Recovery of their Demand, according to due Course of Law, as heretofore used and accustomed: Provided likewise, that nothing herein contained shall affect any Regulations that may have been made by Authority of Parliament, respecting the Church Rates or Chapel Rates of any particular Parishes or Districts.

Appeal.

Proviso for Ecclesiastical Jurisdiction.

Proviso

VIII. And be it further enacted, That, from and after the passing of this Act, if any Proctor of the Arches Court of *Canterbury*, or any other Ecclesiastical Court or Courts in which he shall be entitled to act as Proctor, shall act as such, or permit or suffer his Name to be in any manner used in any Suit, the Prosecution or Defence whereof shall appertain to the Office of a Proctor, or in obtaining Probates of Wills, Letters of Administration or Marriage Licences, to or for, or on account or for the Profit and Benefit of any Person or Persons

Proctors allowing their Names to be used by Persons not entitled to act as Proctors struck off Rolls.

No. 21.
53 George III. c. 127.

not entitled to act as a Proctor, or shall permit or suffer any such Person or Persons to demand or participate in such Profit and Benefit, and Complaint thereof shall be made to the Court or Courts wherein such Proctor hath been admitted and enrolled, and Proof given to the Satisfaction of the said Court or Courts that such Proctor hath offended therein as aforesaid, then and in such case every such Proctor so offending shall be struck off the Roll of Proctors, and be for ever after disabled from practising as a Proctor, or be suspended from the Office, Function and Practice of a Proctor in all and every the said Court or Courts for so long a Period as the Judge or Judges of the said Court or Courts may deem fit; save and except as to any Allowance or Allowances, Sum or Sums of Money that are or shall be agreed to be made to the Widows or Children of any deceased Proctor or Proctors by any surviving Partner or Partners of such deceased Proctor or Proctors; and also save and except as to any Agreement made, or understood to have been made, between Proctors and Articled Clerks, whose Articles have been executed prior to the passing of this Act.

Exceptions.

Persons exercising Functions of a Proctor not being duly enrolled.

IX. And be it further enacted, That, from and after the passing of this Act, in case any Person or Persons shall in his or in their own Name, or in the Name of any other Person or Persons, make, do, act, exercise or perform any Act, Matter or Thing whatsoever in any way appertaining or belonging to the Office, Function or Practice of a Proctor, for or in Consideration of any Gain, Fee or Reward, or with a View to participate in the Benefit to be derived from the Office, Functions or Practice of a Proctor, without being admitted and enrolled, every such Person, for every such Offence, shall forfeit and pay the Sum of Fifty Pounds, to be sued for and recovered in manner hereinafter mentioned.

Penalty.

Proviso for Salaries of Clerks of Seven Years standing.

X. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed to extend to any Salary which shall be agreed to be paid by a Proctor, his Partner or Successor, to a Clerk really and *bona fide* serving in his Office at the time of the passing of this Act, and who shall have been *bona fide* serving in the Office of any Proctor or Proctors for Seven Years next before the passing of the same.

Recovery of Penalties, &c.

XI. And be it further enacted, That all pecuniary Forfeitures and Penalties imposed on any Person or Persons for Offences committed against this Act, shall and may be sued for and recovered in any of His Majesty's Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint or Information, wherein no Essoin, Protection, Privilege, Wager of Law or more than One Imparlance shall be allowed, and wherein the Plaintiff, if he or she shall recover any Penalty or Penalties, shall receive the same for his or her own Use, with full Costs of Suit.

Limitation of Actions.

XII. And be it further enacted, That if any Action or Suit shall be brought or commenced for any thing done in pur-

No. 21. 53 George III. c. 127.

suance of this Act, every such Action or Suit shall be commenced within Three Calendar Months next after the Fact committed, and not afterwards, and shall be laid and tried in the City or County wherein the Cause of Action shall have arisen, and not elsewhere; and the Defendant or Defendants in such Action or Suit shall and may plead the General Issue, and give this Act and the Special Matter in Evidence at any Trial to be had thereupon, and that the same was done in pursuance or by the Authority of this Act; and if the same shall appear to have been so done, or if any Action or Suit shall be brought after the time limited for bringing the same, or shall be laid in any other City, County or Place than as aforesaid, then the Judge shall find for the Defendant or Defendants; and upon such Verdict, or if the Plaintiff or Plaintiffs shall be nonsuited, or suffer a Discontinuance of their Action or Suit, after the Defendant or Defendants shall have appeared, or if, upon Demurrer, Judgment shall be given against the Plaintiff or Plaintiffs, the Defendant or Defendants shall have Treble Costs, and shall have such Remedy for the same as any Defendant or Defendants hath or have for Costs of Suit in any other case by Law.

General Issue.

Treble Costs.

SCHEDULES to which this Act refers.

Schedule (A.)

Significavit of Party being Contumacious and in Contempt.

TO His Most Excellent Majesty and our Sovereign Lord George the Third, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith, by Divine Providence, &c. Health in Him by whom Kings and Princes rule and govern: We hereby notify and signify unto Your Majesty, That one of in the County of hath been duly pronounced guilty of manifest Contumacy and Contempt of the Law and Jurisdiction Ecclesiastical, in not [*as the case may be*] appearing before [*here set out the Style of the Ecclesiastical Judge, or his Representative*], *or* in not obeying the lawful Commands [*here set out the Commands*] of [such Judge or Representative] or in having committed a Contempt in the Face of the Court of [such Judge or Representative] lawfully authorized by [*here set out the nature and manner of such Contempt,*] on a Day and Hour now long past, in a certain Cause of [*here set out the nature of the Cause, and the Names of the Parties to the same.*] We therefore humbly implore and entreat Your said Most Excellent Majesty would vouchsafe to command the Body of the said to be taken and imprisoned for such Contumacy and Contempt. Given under the Seal of our Court the Day of

A. B. Registrar, [*or,* Deputy Registrar,] *as the case may be.*

No. 21.
53 George III. c. 127.

Schedule (B.)

Writ de Contumace Capiendo.

GEORGE, &c. To the Sheriff of Greeting: The hath signified to Us, that of in your County of is manifestly contumacious, and contemns the Jurisdiction and Authority of [*here fully state the Non-appearance, Disobedience, together with the Commands disobeyed, or the Contempt in the Face of the Court, as the case may be*], nor will he submit to the Ecclesiastical Jurisdiction; but forasmuch as the Royal Power ought not to be wanting to enforce such Jurisdiction, We command you that you attach the said by his Body, until he shall have made Satisfaction for the said Contempt; and how you shall execute this our Precept notify unto and in nowise omit this, and have you there this Writ. Witness Ourself at Westminster, the Day of in the Year of our Reign.

Schedule (C.)

Writ of Deliverance.

WHEREAS of in your County of whom lately, at the denouncing of for Contumacy, and by Writ issued thereupon, you attached by his Body until he should have made Satisfaction for the Contempt; now he having submitted himself, and satisfied the said Contempt, We hereby empower and command you, that without Delay you cause the said to be delivered out of the Prison in which he is so detained, if upon that Occasion and no other he shall be detained therein. Given under the Seal of our of *A. B.* Registrar, [*or,* Deputy Registrar, *as the case may be.*]

Extracted by *E. F.*
Proctor.

PART IV. CLASS XXV.

COURTS OF EQUITY.*

* For Acts respecting Conveyances by Infants, Lunatics, &c. see Pt. II. Cl. VI

No. 1.

18 Edward III. st. 5.—The Oaths of the Clerks of the Chancery, and of the Clerks of Course.

No. 1. 18 Edward III. stat. 5

Ex Rot. in Turr. Lond.

VOUS jurez, que bien & loialment servirez a nostre Seignur le Roy & a soun poeple en le office de le Chauncellarie, a quele vous estes attitle; & nassentirez ne procurez desheritance ne perpetual damage du Roy a vostre poair; ne fraude ferres, ne procurez estre fait, a tort dascuns du poeple, nen chose que touche la garde de seal: & loialement counseilerez les choses que touchent le Roy, quant serrez ent requis; & le counseil que vous saves touchant luy, conceleres. Et si vous saches desheritance ou perpetuel damage le Roy, ou fraude estre fait sur choses queux touchent la garde du dit seale, vous metterez vostre loiale proair de ceo redresser & amender. Et si de ceo ne poiez faire, vouz aviserez le chanceller, ou auters que le poent faire amender a vostre entention. *Et addatur pro clericis de cursu:* Et vous ne porterez, ne soeffres estre porte a vostre escient, brieves que vous ferrez, hors du court

'YE shall swear, that well and lawfully ye shall serve our Lord the King and his People in the Office of Clerk of the Chancery, to which ye be attitled; and ye shall not assent nor procure the King's Disherison nor perpetual Damage to your Power; nor ye shall do, nor procure to be done, any Fraud to any Man's Wrong, nor Thing that toucheth the Keeping of the Seal. And shall lawfully give Counsel in the Thing that toucheth the King, when ye shall be thereto required; and the Counsel which you know touching him, ye shall conceal. And if you know the King's Disherison, or perpetual Damage or Fraud to be done upon the Things which touch the keeping of the Seal, ye shall put your lawful Power to repress and amend it; and if ye cannot do it, then ye shall certify the Chancellor, or other, which may do the same, to be amended to your Intent. And for the Clerks

Clerks of Course.

No. 1.
18 Edward III. st. 5

of Course shall be added: 'And ye shall not bring, nor 'to your Knowledge suffer 'to be brought, any Writs 'which ye make out of the 'Court not sealed, thereof 'to do Execution, nor shall 'record any Attorney by Writs, 'nor without Writs, without 'especial Licence, if ye have 'not lawfully examined the 'Party and the Attorney in 'proper Person, or at the least 'him that shall make Attorney 'in proper Person. Nor ye 'shall deliver any Writ which 'shall be of Commandment to 'the Examiners, nor to the 'Seal, before that the same 'Writ be sent to you by the 'Commander, which thereof 'hath Power, unless it be to 'the Chancellor, or to one of the 'Masters, which commandeth 'you to make the Writs. And 'all the Writs which ye shall 'make, ye shall deliver to the 'Examiners by your own 'Hand, or by one Companion 'which is sworn to the King, 'if ye yourself be out of the 'Court because of Sickness, 'or other Cause necessary, so 'that ye cannot do it. And 'no Writ written of another 'Man's Hand shall be deliver-'ed to the Examiners under 'your Name, as yours, nor 'no Name shall be put under 'your Writs, but your own, 'as God you help, and all 'Saints.'

Ex Rot. in Turr. Lond.

nient ensealez dent faire execution. Ne nul attourne ne recorderez, ne per brieves ne sauns brief, sauns especial counge & si vous neiez loialement examines la partie & lattourne en propre persone, ou a meyns celluy que fra lattourne en propre persone. Ne nul brieve que soit de commandement ne liverez a les examinours ne au seale, avaunt que mesme le brieve soit commaunde a vous per commandour que poair en eit, sil ne soit a Chancellour, ou a un des meisters que vous commandera de faire lez brieves. Et toutz lez brieves queux vous ferres, liveres a les examinours per vostre mayn demesne, ou par une compaignon qui est jurez au Roy, si vous nesme soies hors du court per cause de maladie, ou autre cause necessarie, ne les poez faire. Et que nul brieve escript dautri mayn liveres a les examinours soutz vostre noun come le vostre, ne nul noun forsque le vostre mettres sur vos briefs. Si vous eide Dieu & ses Seintes.

No. 2.

17 Richard II. c. 6. — Upon an untrue Suggestion in the Chancery, Damages may be awarded.

No. 2.
17 Richard II. c. 6.

"ITEM, Forasmuch as People be compelled to come "before the King's Council,

ITEM qe qant gentz sont faitz venir devaunt le counseil du Roi ou en la

Ex Rot. in Turr. Lond.

Chancellarie par briefs founduz sur suggestions nient vrais qe le Chanceller pur le temps esteant maintenant apree qe tielx suggestions sont duement trovez & provez nient veritables eit poair dordeigner & agarder damages solonc sa discretion a celuy qest issint travaillez noun duement come desuis.

" or in the Chancery by Writs " grounded upon untrue Suggestions;" 'that the Chancellor for the Time being, presently after that such Suggestions be duly found and ' proved untrue, shall have ' Power to ordain and award ' Damages according to his ' Discretion, to him which is ' so troubled unduly, as afore ' is said.'

No. 2. 17 Richard II c. 6.

No. 3.

15 Henry VI. c. 4. — None shall sue a *Subpœna* until he find Surety to satisfy the Defendant his Damages, if he do not verify his Bill.

ITEM pur ceó que diverses persones ont avant cez heurez este graundement vexez & grevez per briefs de subpena purchaces pur matiers determinablez per la comen ley de cest terre, a graund damage de tielx personez issint vexes, en subversion & impediment de la comen ley suisdite; Nostre Seignur le Roy voet qe les estatuitz ent faitz soient duement gardes solonceque la fourme & effect dicelles; & que null briefe de sub pena soit graunte de cy enavant, tanquee seurtee soit trove, pur satisfier la partie ensy greve & vexe pur ses damages & expenses, si issint soit que le matier ne poet pas estre fait bon quele est contenus en la bille.

" ITEM, For that divers " Persons have before this " Time been greatly vexed " and grieved by Writs of " *Subpœna*, purchased for Matters determinable by the " Common Law of this Land, " to the great Damage of such " Persons so vexed, in Subversion and Impediment of " the Common Law aforesaid;" ' our Lord the King ' doth command, That the Statutes thereof made shall be ' duly observed according to ' the Form and Effect of the ' same, and that no Writ of ' *Subpœna* be granted from ' henceforth until Surety be ' found to satisfy the Party ' so grieved and vexed for his ' Damages and Expences, if ' so be that the Matter cannot ' be made good, which is contained in the Bill.'

No. 3. 15 Henry VI. c. 4. This Chapter is not upon the Roll.

No. 4.

5 Elizabeth, c. 18.—An Act declaring the Authority of the Lord Keeper of the Great Seal and the Lord Chancellor of *England* to be one.

No. 4.
5 Elizabeth, c. 18.

'WHERE some Question hath of late risen, whether like 'Place, Authority, Preheminence, Jurisdiction and 'Power, doth belong, and of Right ought to belong, to the 'Office of the Lord Keeper of the Great Seal of *England* for 'the Time being, as of Right doth and ought to belong to the 'Office of the Lord Chancellor of *England* for the Time being, 'or not:'

The Authority of the Lord Keeper of the Great Seal, and the Lord Chancellor, is all one.

II. For Declaration whereof and in avoiding such Question hereafter, be it enacted and declared by the Queen our Sovereign Lady, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That the Common Law of this Realm is, and always was, and ought to be taken, that the Keeper of the Great Seal of *England* for the Time being hath always had, used and executed, and of Right ought to have, use and execute, and from henceforth may have, perceive, take, use and execute, as of Right belonging to the Office of the Keeper of the Great Seal of *England* for the Time being, the same and like Place, Authority, Preheminence, Jurisdiction, Execution of Laws, and all other Customs, Commodities and Advantages, as the Lord Chancellor of *England* for the Time being lawfully used, had and ought to have, use and execute, as of Right belonging to the Office of the Lord Chancellor of *England* for the Time being, to all Intents, Constructions and Purposes, and as if the same Keeper of the Great Seal for the Time being were Lord Chancellor of *England*.

No. 5.

43 Elizabeth, c. 4.—An Act to redress the Mis-employment of Lands, Goods and Stocks of Money heretofore given to certain charitable Uses.

[Inserted Pt. II. Cl. V. No. 9.]

No. 6.

1 William and Mary, st. 1. c. 21.—An Act for enabling Lords Commissioners for the Great Seal to execute the Office of Lord Chancellor or Lord Keeper.

No. 6.
1 William and Mary, c. 21.

'WHEREAS their most Excellent Majesties King *William* 'and Queen *Mary*, have thought fit that the Office of 'the Lord Chancellor or Lord Keeper of the Great Seal of '*England*, should be executed by Commissioners appointed

'for the same under the Great Seal of *England*: And whereas 'several Authorities, Jurisdictions, and Powers, are by seve-'ral Acts of Parliament, and otherwise, vested, settled, and 'placed in the Lord Chancellor of *England*, or Lord Keeper 'of the Great Seal of *England* for the Time being:' Now for the preventing of all Doubts and Questions that may arise, whether all or any of those Authorities, Jurisdictions, and Powers may be exercised by such Commissioners:

No. 6.
1 William and Mary, c. 21.

II. Be it enacted and declared, and it is hereby enacted and declared by the King's and Queen's most Excellent Majesties, and by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That such Commissioners for the Time being may use and exercise at all Times according to their Commissions, as of Right belonging to the Lords Commissioners of the Great Seal of *England* for the Time being, all and every the same and like Offices, Authority, Jurisdiction, and Execution of Laws, and all other Customs, Privileges, Emoluments, and Advantages, which the Lord Chancellor of *England*, or Lord Keeper of the Great Seal of *England* for the Time being, of Right ought to have, use, or execute, as belonging to their or either of their said Offices, or otherwise howsoever, to all Intents and Purposes, as if the said Lords Commissioners for the Time being were Lord Chancellor, or Lord Keeper of the Great Seal of *England*, and shall have, and take Place next after the Peers of this Realm, and Speaker of the House of Commons, unless any of them shall happen to be a Peer, and then to take Place according to his Peerage.

Commissioners of the Great Seal may execute the Power of Chancellor.

Their Place.

III. Provided always, and be it enacted by the Authority aforesaid, That any one Commissioner (in the Absence of the others) may hear Motions, and give Orders and Directions touching the interlocutory Proceedings in any Cause, so as such one Commissioner in the Absence of the others shall not make any Decrees, or put the Great Seal to any Thing whatsoever, whereunto the whole Broad Seal ought to be affixt, unless there be Two Commissioners present.

One Commissioner may hear Motions, &c.

IV. And be it further enacted by the Authority aforesaid, That the nominating and appointing of the *Custos Rotulorum*, throughout all the Shires and Counties of this Realm, is and shall be as is directed by a Statute made in the thirty-seventh Year of *Henry* the Eighth, intituled, "A Bill for *Custos Rotulorum*, and the Clerkship of the Peace;" any Law, Usage, or Statute to the contrary in any wise notwithstanding.

Custos Rotulorum how to be chosen.

37 Hen. 8. c. 1.

V. And be it further enacted by the Authority aforesaid, That the *Custos Rotulorum*, or other Person, to whom of Right it doth or shall belong to nominate or appoint the Clerk of the Peace for any County, Riding, Division, or other Place, shall, from time to time, where the Office of the Clerk of the Peace now is, or hereafter shall be void, nominate and appoint one able and sufficient Person residing in the said County, Riding, Division, or other Place, for which he is so appointed or to be

Clerk of the Peace how to be appointed.

No. 6.
1 William and Mary, c. 21.

appointed Clerk of the Peace, to execute the same by himself or his sufficient Deputy, and to take and receive the Fees, Profits, and Perquisites thereof, for so long Time only as such Clerk of the Peace shall well demean himself in his said Office.

Justices of Peace may discharge Clerk of the Peace.

VI. And be it enacted by the Authority aforesaid, That if any Clerk of the Peace already nominated or to be nominated, as aforesaid, shall misdemean himself in the Execution of the said Office; and thereupon a Complaint and Charge in Writing of such Misdemeanor shall be exhibited against him to the Justices of the Peace in their General Quarter-Sessions, it shall be lawful for the said Justices, or the major Part of them, from time to time, upon Examination and due Proof thereof, openly in their said General Quarter-Sessions, to suspend or discharge him from the said Office; and that in such Case the *Custos Rotulorum*, or other Person, to whom it shall of Right belong to nominate and appoint the Clerk of the Peace for such County, Riding, Division, or Place, shall nominate and appoint one other able and sufficient Person residing in the said County, Riding, Division, or Place, as aforesaid, to be Clerk of the Peace in the Place of such Person so amoved, as aforesaid; and in case of Refusal or Neglect to make such Nomination and Appointment, before the next General Quarter-Sessions to be holden after the said Refusal, that it shall and may be lawful for the said Justices of the Peace, at their General Quarter-Sessions for the said County, Riding, Division, or Place, or the major Part of them, to nominate and appoint one able and sufficient Person residing in the said County, Riding, Division, or Place, to be Clerk of the Peace in the Place of such Person so amoved, as aforesaid, to have, hold, and enjoy the said Office of Clerk of the Peace, and to execute the same by himself, or his sufficient Deputy, and to receive the Fees, Profits, and Perquisites thereof.

Who shall nominate upon such Vacancy.

New Clerk of the Peace liable to Penalties, &c.

VII. Provided always, and be it enacted by the Authority aforesaid, That he shall be liable and subject to all the Penalties, Forfeitures, Conditions, Limitations, and provisions herein and hereby mentioned and expressed, and may be amoved or discharged by the said Justices, or the major Part of them, in such Manner and Way as is above specified.

Custos Rotulorum, &c. shall take no Fee.

VIII. And be it further enacted by the Authority aforesaid, That it shall not be lawful for any *Custos Rotulorum*, or other Person, to whom of Right it doth or shall belong to nominate, elect, or appoint, any Clerk of the Peace, to sell the said Place of Clerk of the Peace, or to take any Bond or other Assurance to receive or have any Reward, Money, Fee, or Profit, directly or indirectly, to him or any other Person, for such nominating, electing, or appointing, but that every such *Custos Rotulorum*, or other Person that shall so sell the Clerkship of the Peace, and every Clerk of the Peace, who shall so buy his Place, are hereby disabled to hold their Places of *Custos Rotulorum*, or Clerkship of the Peace, and shall also each of them respectively forfeit Double the Sum or Value of

Penalty upon Buyer and Seller.

other Thing that shall be so given or taken, to be recovered by him or them to their own Use that shall sue for the same, to be prosecuted by any Action of Debt, Suit, Bill, Plaint, or Information, in any of their Majesties Courts at *Westminster*, wherein no Essoin, Protection, or Wager of Law shall lie.

No. 6. 1 William and Mary, c. 21.

IX. And be it further enacted by the Authority aforesaid, That every Clerk of the Peace, before he enter upon the Execution of his said Office, shall in open Sessions take the Oath following, *viz.*

Clerk of the Peace to take the following Oath.

'I A. B. do swear, That I have not, nor will pay any Sum or 'Sums of Money, or other Reward whatsoever, nor 'given any Bond or other Assurance to pay any Money, Fee, 'or Profit directly or indirectly to any Person or Persons whomsoever, for such Nomination or Appointment.

'*So help me God.*'

X. Provided always, That nothing in this Act contained shall any ways affect or relate to the Clerk of the Peace for the Duchy and County Palatine of *Lancaster* only; which said Clerk of the Peace holds his said Office for Lives, by Grants from his late Majesty King *Charles* the Second, as his Predecessors in the said Place have done, from former Kings and Queens of this Realm, in Right of their Duchy and County Palatine aforesaid. This Act to commence from the first Day of *May* one thousand six hundred eighty-nine.

Not to extend Lancaster.

No. 7.

4 and 5 William and Mary, c. 16.—An Act to prevent Frauds by clandestine Mortgages.

[Inserted Pt. II. Cl. I. No. 18.]

No. 8.

4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

No. 8. 4 Anne, c. 16.

XXII. AND be it further enacted by the Authority aforesaid, That no *Subpœna*, or any other Process for Appearance, do issue out of any Court of Equity, till after the Bill is filed with the proper Officer in the respective Courts of Equity, except in Cases of Bills for Injunctions to stay Wastes, or stay Suits at Law commenced, and a Certificate thereof brought to the *Subpœna* Office, or to him who usually makes out *Subpœnas* or other Process in the several Courts of Equity, under the Hand of the Six Clerk, or other Clerk or Officer who usually files Bills in Equity, for which Certificate he shall receive no Fee.

No Subpœna to issue till after Bill filed.

Exception.

XXIII. And for the better preventing vexatious Suits in Courts of Equity; be it further enacted, That upon the Plain-

On dismissing Bills in Equity,

No. 8. 4 Anne, c. 16. Plaintiff or Defendant to pay full Costs.

tiff's dismissing his own Bill, or the Defendant's dismissing the same for want of Prosecution, the Plaintiff in such Suit shall pay to the Defendant or Defendants, his or their full Costs, to be taxed by a Master: And that no Copy, Abstract, or Tenor of any Bill in Equity, do go with the *Dedimus* or Commission for taking the Defendant's Answer; but in Lieu and Recompense thereof, the sworn Clerks of the Court of *Chancery* shall take to their own Use, in all Causes, the whole Term Fee of three Shillings and four Pence, and also the whole Fee or Fees of and for all small Writs made by the said sworn Clerks.

[Inserted at large Pt. II. Cl. I. No 23]

No. 9.

P. 5 Anne, c. 9.—An Act for rendring more effectual an Act passed in the first Year of her Majesty's Reign, intituled, "An Act for the better preventing Escapes out of the *Queen's Bench* and *Fleet Prisons*."

No. 9. 5 Anne, c. 9. Person in Custody of Sheriff on a Decree, and making his Escape, Sheriff liable to pay, &c.

IV. AND be it further enacted by the Authority aforesaid, That if any Person or Persons is, are, or shall be in Custody of any Sheriff or other Officer, either by virtue of the said Act, or of this present Act, or otherwise, for not performing any Decree of the High Court of *Chancery*, or Court of *Exchequer*, whereby any Sum or Sums of Money is ordered or decreed to be paid, and shall afterwards make any Escape from the said Sheriff or other Officer, that then and in such Case the Person and Persons, their Executors or Administrators, to whom the Money was to be paid by the said Decree, shall have the same Remedy against the said Sheriff, as if such Person or Persons so escaping had been in Custody upon an Execution at Law, and shall and may recover the several Sum and Sums of Money decreed to be paid to him, her, or them in and by such Decree, against such Sheriff or other Officer, together with his, her, or their Costs of Suit, in any Action or Actions of Debt, or upon the Case, to be brought or commenced against such Sheriff or other Officer in any of her Majesty's Courts of Record at *Westminster*, wherein no Protection or Wager of Law shall be admitted, or any more than one Imparlance; any Law, Usage, or Custom to the contrary in any wise notwithstanding.

[Inserted at large Pt. IV. Cl. III. No. 20]

No. 10.

P. 12 George I. c. 32.—An Act for better securing the Monies and Effects of the Suitors of the Court of Chancery, and for other Purposes.

No. 10. 12 George I. c. 32.

III. AND to the End the Account between the Suitors of the High Court of Chancery and the Bank of *England* may be the more regularly and plainly kept, and the

State of such Account may be at all Times seen and known, Be it further enacted by the Authority aforesaid, That there shall be one Person appointed by the High Court of Chancery, .. act, perform, and do all such Matters and Things relating to the Delivery of the Suitors' Money and Effects into the Bank, and taking them out of the Bank, and the keeping the Accounts with the Bank, and all other Matters relating thereto, as in and by the said recited Orders, or either of them, are prescribed and directed to be done and performed by the Masters and Usher of the said High Court of Chancery, which said Officer so to be appointed shall be called the Accountant General of the Court of Chancery, and shall hold such Office during the Pleasure of the said Court; and an Account shall be kept in his Name with the Bank of *England* for and on the Behalf of the Suitors of the said Court of Chancery, in such Manner as is directed by the said recited Orders, with respect to the Masters of the said Court and the Bank; and the same Rules, Methods and Directions, as are prescribed by the said Orders to the Suitors, the Masters, Usher and Bank, as to the delivering into, and taking out of the Bank the Monies and Effects of the Suitors, and other Matters therein contained, shall be observed by the Suitors, the Bank, and the said Accountant General, unless where the Court of Chancery shall, according to the Exigency and Circumstances of Affairs, otherwise determine and appoint. • • •

An Accountant General of the Court of Chancery appointed.

IV. And it is hereby further enacted by the Authority aforesaid, That the said Accountant General shall, as to the several Regulations and Directions prescribed in the said Orders, stand and be in the Place and Room of the Masters, and Usher of the said Court, and shall receive no other Fee or Reward from the Suitors for the Exercise of his said Office, than what is allowed to the Masters in and by the said Order of the twenty-sixth Day of *May* one thousand seven hundred and twenty-five; and the several Masters and Usher of the Court of Chancery, their Executors and Administrators, are hereby required with convenient Speed, to make up their several Accounts with the said Accountant General, or any other Person thereunto authorized by the Court of Chancery, of all the Monies, Securities and Effects of the Suitors of the said Court in their Custody, or under their Direction or Care; and to pay and deliver into the Bank all Monies, Deposits and Effects of the Suitors of the said Court yet remaining in their several Hands, there to be carried to the Account of the said Accountant General, and to be placed causewise or otherwise, as is already, or shall hereafter be directed by the said Court; and all Monies, Deposits and Effects of the Suitors of the said Court, already deposited with or delivered to the Bank by the said Masters or Usher, or on their Account, shall in like Manner be carried to the Account of the said Accountant General, and be placed causewise or otherwise, as is already or shall hereafter be directed by the said Court; and the said Masters and Usher, their Executors and Administrators, shall be indemnified and

Accountant to be in the Place of the Masters and Usher of the Court.

No. 10. 12 George I. c. 32.

discharged of and from all Monies, Deposits and Effects of the said Suitors, so paid or delivered into the Bank as aforesaid.

Mortgages, &c. now in the Name of Masters, &c. assigned to the Accountant.

V. And it is hereby further enacted, That all Mortgages, Tallies, Orders, Stocks, Annuities and other transferrable Securities, now in the Name of any of the said Masters or Usher, either singly by themselves, or jointly with others, in Trust for the Suitors of the said Court, shall be assigned and transferred to the said Accountant General; and such Assignments and Transfers shall be freed and discharged from the Stamp-Duty, and from any other Duty imposed thereon by Act of Parliament; and that all Mortgages, Tallies, Orders, Stocks, Annuities, and other transferrable Securities, to be hereafter taken by the Directions of the said Court for the Benefit of any of the Suitors shall, if appointed to be taken in the Name of any Officer of the said Court, be taken in the Name of the said Accountant General; and that in all such Assignments and Transfers to the said Accountant General, as also in all such other transferrable Securities, to be hereafter taken in his Name, the particular Trust shall be specified and inserted in the Assignment, Transfer or Security itself; and such other Rules and Methods of proceeding shall be had and observed with respect to such transferrable Securities, by the Accountant General and others, as by the said recited Orders are respectively appointed to be observed by the Masters, Ushers, and others.

After Death, &c. of Accountant, the Securities vested in his Successor.

VII. And it is hereby further enacted, That from and after the Death or Removal of any Accountant General, all Mortgages, Tallies, Orders, Stocks, Annuities, and other transferrable Securities, vested in him at the Time of such his Death or Removal, in Trust for the Suitors of the said Court, shall vest in the succeeding Accountant General, for the same Estates and Interests as he then had therein, and subject to the same Trusts, without any Assignment or Transfer whatsoever; and that upon such Death or Removal of any Accountant General, all Monies, Deposits and Effects of the Suitors of the said Court, for which he shall then have Credit in his Account with the Bank, shall be carried to the Account of the succeeding Accountant General.

Accountant not to meddle with the Suitors' Money, but only keep Account with the Bank.

VIII. And to the End that all Misapplications or Wastings of the Subjects' Money by any Officer of the High Court of Chancery may be entirely prevented for the future, Be it therefore further enacted by the Authority aforesaid, That the said Accountant General shall not meddle with the actual Receipt of any of the Money or Effects of the Suitors, but shall only keep the Account with the Bank; and the said Accountant General observing the Rules hereby prescribed, or hereafter to be prescribed to him by the said Court, shall not be answerable for any Money or Effects which he shall not actually receive; and the Bank of *England* shall be answerable for all the Monies and Effects of the Suitors which are or shall be actually received by them.

No. 11.

12 George I. c. 33.—An Act for Relief of the Suitors of the High Court of Chancery.

No. 11. 12 George I. c. 33. The Cash in the Bank to be one common Cash.

'XX. AND to the End that no Suitor or Suitors of the said Court of Chancery may be delayed in Payment of any Money due to him, her or them, but that every one may receive his or her full Demand, whensoever he or she shall apply for the same, in the most easy and expeditious Way;' Be it therefore enacted by the Authority aforesaid, That all the Money and Cash now deposited in the Bank, or that shall at any Time hereafter be paid into or deposited in the Bank, on the Account of the Suitors of the said Court of Chancery, or any of them, or by Order of the said Court, and all the Monies arising by the Rates and Duties given by this Act, or borrowed thereon, and paid into the Bank, shall be and be accounted and taken to be one Common and General Cash, and shall be promiscuously issued and issuable when and as the Court of Chancery shall direct, for the answering, paying and clearing the Debts and Demands of any of the Suitors of the said Court.

[The Rest of the Act relates to the Relief of Suitors with respect to Money in the Hands of defaulting Masters.]

No. 12.

3 George II. c. 30.—An Act to put an end to certain Disputes touching Orders and Decrees made in the Court of Chancery.

No. 12. 3 George II. c. 30. Orders and Decrees made by the Master of the Rolls valid.

'WHEREAS divers Questions and Disputes have arisen 'touching the Authority of the Master of the Rolls in 'the High Court of Chancery,' For putting an end to all Disputes concerning the same, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all Orders and Decrees made by the present Master of the Rolls or any of his Predecessors, or hereafter to be made by the said Master of the Rolls, or any of his Successors, except Orders and Decrees of such Nature or Kind as, according to the Course of the said Court, ought only to be made by the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the Time being, shall be deemed and taken to be valid Orders and Decrees of the said Court of Chancery, subject nevertheless to be discharged, reversed or altered by the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the Time being, and so as no such Orders or Decrees be inrolled till the same are signed by the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal.

Exception.

No. 13.

5 George II. c. 25.—An Act for making Process in Courts of Equity effectual against Persons who abscond, and cannot be served therewith, or who refuse to appear.

No. 13.
5 George II.
c. 25.

'WHEREAS sometimes Persons have withdrawn themselves beyond the Seas, or otherwise absconded, to 'avoid appearing in Courts of Equity, or being served with 'Process for that Purpose, or being brought into Court by '*Habeas Corpus*, have refused to appear;' For Remedy of the Inconveniences thence arising, be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if in any Suit which hath been, or hereafter shall be, commenced in any Court of Equity, any Defendant or Defendants, against whom any *Subpœna* or other Process shall issue, shall not cause his, her or their Appearance to be entred upon such Process within such time, and in such manner as according to the Rules of the Court the same ought to have been entred in case such Process had been duly served, and an Affidavit or Affidavits shall be made to the Satisfaction of such Court, that such Defendant or Defendants is or are beyond the Seas, or that upon Inquiry at his, her or their usual Place of Abode, he, she or they could not be found so as to be served with such Process, and that there is just Ground to believe that such Defendant or Defendants is or are gone out of the Realm or otherwise abscond, to avoid being served with the Process of such Court; then and in such Case the Court out of which such Process issued, may make an Order directing and appointing such Defendant or Defendants to appear at a certain Day therein to be named; and a Copy of such Order shall within fourteen Days after such Order made be inserted in the *London Gazette*, and published on some Lord's Day, immediately after Divine Service, in the Parish Church of the Parish where such Defendant or Defendants respectively made his, her or their usual Abode within thirty Days next before such his, her or their absenting; and also a Copy of such Order shall within the Time aforesaid be posted up as after mentioned (that is to say) a Copy of every such Order made in his Majesty's High Court of Chancery, Court of Exchequer, or the Court of the Dutchy Chamber of *Lancaster*, at *Westminster*, shall be posted up in some publick Place at the Royal Exchange in *London*; and a Copy of every such Order made in any of the Courts of Equity of the Counties Palatine of *Chester*, *Lancaster* and *Durham*, or of the great Sessions in *Wales*, shall be posted up at some publick Place in some Market Town within the Jurisdiction of the Court by which such Order was made, and nearest to the Place where such Defendant or Defendants respectively made his, her or

Persons not entering Appearance within the usual Time after Subpœna, and justly suspected to abscond to avoid the Process, Court to fix a Day for his Appearance, to be inserted in the Gazette, and published in the Parish Church of the Defendant, and posted in some publick Place.

their usual Abode as aforesaid, such Place of Abode being also within the Jurisdiction of the said Court; and if the Defendant or Defendants do not appear within the Time limited by such Order, or within such further Time as the Court shall appoint, then on Proof made of such Publication of such Order as aforesaid, the Court being satisfied of the Truth thereof may order the Plaintiff's Bill to be taken *pro confesso*, and make such Decree thereupon as shall be thought just, and may thereupon issue Process to compel the Performance of such Decree, either by an immediate Sequestration of the real and personal Estate and Effects of the Party so absenting (if any such can be found) or such Part thereof as may be sufficient to satisfy the Demands of the Plaintiff or Plaintiffs in the said Suit, or by causing Possession of the Estate or Effects demanded by the Bill to be delivered to the Plaintiff or Plaintiffs or otherwise, as the Nature of the Case shall require; and the said Court may likewise order such Plaintiff or Plaintiffs to be paid and satisfied his, her or their Demands out of the Estate or Effects so sequestred, according to the true Intent and Meaning of such Decree, such Plaintiff or Plaintiffs first giving sufficient Security in such Sum as the Court shall think proper, to abide such Order touching the Restitution of such Estate or Effects as the Court shall think proper to make concerning the same, upon the Defendant or Defendants Appearance to defend such Suit, and paying such Costs to the Plaintiff or Plaintiffs as the Court shall order; but in case such Plaintiff or Plaintiffs shall refuse or neglect to give such Security as aforesaid, then the said Court shall order the Estate or Effects so sequestred, or whereof Possession shall be decreed to be delivered, to remain under the Direction of the Court, either by appointing a Receiver thereof or otherwise, as to such Court shall seem meet, until the Appearance of the Defendant or Defendants to defend such Suit, and his, her or their paying such Costs to the Plaintiff or Plaintiffs, as the said Court shall think reasonable, or until such Order shall be made therein as the Court shall think just.

No. 13. 5 George II c. 25.

Defendant not appearing, the Plaintiff's Bill to be taken pro confesso, his Estate sequestred,

and Plaintiff satisfied,

on giving Security to the Court to defend the Suit on Defendant's Appearance; Plaintiff refusing such Security, the Effects sequestred to remain under Direction of the Court.

II. And it is hereby further enacted by the Authority aforesaid, That from and after the first Day of *Easter* Term one thousand seven hundred and thirty-two, if any Defendant or Defendants, by virtue of any Writ of *Habeas Corpus* or other Process issuing out of any Court of Equity, shall be brought into Court, and shall refuse or neglect to enter his, her or their Appearance according to the Rules or Method required by the said Court, or to appoint a Clerk in Court, or Attorney of such Court to act on his, her or their Behalf respectively, such Court may appoint a Clerk in Court or Attorney of such Court to enter an Appearance for such Defendant or Defendants respectively, and such Proceedings may thereupon be had in the Cause, as if the Party had actually appeared.

After first Day of Easter Term 1732, Defendants brought into Court by Habeas Corpus, and refusing to enter Appearance, Court to enter it for them.

III. Provided always, That if any Person, against whom any Decree shall be made, upon Refusal or Neglect to enter

Persons in Custody so refu-

No. 13. 5 George II. c. 25.

sing, to be served with a Copy of the Decree.

his, her or their Appearance, or appoint a Clerk in Court, or Attorney to act on his, her or their Behalf, shall be in Custody or forthcoming, so that he, she or they may be served with a Copy of such Decree, then he, she or they shall be served with a Copy thereof, before any Process shall be taken out to compel the Performance thereof.

Persons out of the Realm affected by such Decree, if they return within 7 Years, to be served with a Copy,

or in case of Death, his Heir, &c.

IV. Provided also, That if any Decree shall be made in pursuance of this Act against any Person or Persons being out of the Realm, or absconding in manner aforesaid, at the Time such Decree is pronounced, and such Person or Persons shall within seven Years after the making such Decree return or become publickly visible, then and in such Case he, she or they shall likewise be served with a Copy of such Decree within a reasonable Time after his, her or their Return or publick Appearance shall be known to the Plaintiff or Plaintiffs; and in case any Defendant against whom such Decree shall be made, shall within seven Years after the making such Decree, happen to die before his or her return into this Realm, or appearing openly as aforesaid, or shall within the Time last before mentioned die in Custody before his or her being served with a Copy of such Decree, then his or her Heir, if such Defendant shall have any real Estate sequestred, or whereof Possession shall have been delivered to the Plaintiff or Plaintiffs, and such Heir may be found, or if such Heir shall be a Feme Covert, Infant, or *Non compos mentis*, the Husband, Guardian or Committee of such Heir respectively; or if the personal Estate of such Defendant be sequestred, or Possession thereof delivered to the Plaintiff or Plaintiffs, then his or her Executor or Administrator (if any such there be) may and shall be served with a Copy of such Decree within a reasonable Time after it shall be known to the Plaintiff or Plaintiffs, that the Defendant is dead, and who is his or her Heir, Executor or Administrator, or where he, she or they respectively may be served therewith.

If Persons served with such Copies, shall not petition a re-hearing of the Cause within 6 Months, the Decree to be absolutely confirmed, and bar all claiming by them.

V. Provided always, That if any Person or Persons so served with a Copy of such Decree, shall not within six Months after such Service appear and petition to have the said Cause reheard, such Decree so made as aforesaid shall stand absolutely confirmed against the Person or Persons so served with a Copy thereof, his, her and their respective Heirs, Executors and Administrators, and all Persons claiming or to claim by, from or under him, her, them or any of them, by virtue of any Act done or to be done subsequent to the Commencement of such Suit.

Defendants petitioning a rehearing within 7 Years, and giving Security for Costs, admitted to answer, and the Cause to be heard again.

VI. Provided nevertheless, That if any Person, so served with a Copy of such Decree, shall within six Months, after such Service, or if any Person not being so served shall within seven Years next after the making such Decree, appear in Court, and petition to be heard with respect to the Matter of such Decree, and shall pay down or give Security for Payment of such Costs as the Court shall think reasonable in that Behalf, the Person or Persons so petitioning his, her or their

respective Representatives, or any Person or Persons claiming under him, her or them respectively, by virtue of any Act done before the Commencement of the Suit, may be admitted to answer the Bill exhibited, and issue may be joined, and Witnesses on both Sides examined, and such other Proceedings, Decree and Execution may be had thereon, as there might have been in case the same Party had originally appeared, and the Proceedings had then been newly begun, or as if no former Decree or Proceedings had been in the same Cause.

No. 13. 5 George II. c. 25.

VII. Provided nevertheless, and be it enacted by the Authority aforesaid, That if any Person or Persons, against whom such Decree shall be made, his, her or their Heirs, Executors or Administrators, shall not within seven Years next after the making of such Decree, appear and petition to have the Cause reheard, and pay down or give Security for Payment of such Costs as the Court shall think reasonable in that Behalf, such Decree made as aforesaid shall stand absolutely confirmed against the Person and Persons against whom such Decree shall be made, his, her and their Heirs, Executors and Administrators, and against all Persons claiming or to claim, by, from or under him, her, them or any of them, by virtue of any Act done or to be done subsequent to the Commencement of such Suit; and at the End of such seven Years it shall and may be lawful for the Court to make such further Order as shall be just and reasonable, according to the Circumstances of the Case.

Not appearing within 7 Years, and making such Petition to be absolutely barred.

VIII. Provided always, That this Act shall not extend or be construed to extend to warrant or make good any Proceeding against any Person beyond the Seas, unless it shall appear to the Satisfaction of the Court by Affidavit or Affidavits, before the making of such Decree, that such Person had been in that Part of *Great Britain* called *England*, within two Years next before the *Subpœna* in such Suit issued against such Person.

Not to affect Persons beyond the Seas, unless Affidavit be made of their being in England within 2 Years before the Subpœna.

IX. Provided also, That this Act shall not extend or be construed to extend to warrant or make good any Proceeding against any Person in any Court of Equity having a limited Jurisdiction, unless it shall appear to the Satisfaction of such Court by Affidavit or Affidavits, before the making of such Decree, that such Person had resided within the Jurisdiction of such Court, within one Year next before the *Subpœna* in such Suit issued against such Person.

Not to extend to Courts having a limited Jurisdiction, unless Oath be made of personal Residence in such Jurisdiction 1 Year before the Subpœna.

No. 14.

7 George II. c. 20.—An Act for the more easy Redemption and Foreclosure of Mortgages.

[Inserted Pt. I. Cl. II. No. 28.]

No. 15.

12 George II. c. 24.—An Act to empower the High Court of *Chancery* to lay out upon proper Securities any Monies not exceeding a Sum therein limited, out of the common and general Cash in the Bank of *England*, belonging to the Suitors of the said Court, for the Ease of the said Suitors, by applying the Interest arising therefrom, for answering the Charges of the Office of the Accountant General of the said Court.

No. 16.

4 George III. c. 32.—An Act to empower the High Court of Chancery to lay out, upon proper Securities, a further Sum of Money, not exceeding a Sum therein limited, out of the Common and General Cash in the Bank of *England* belonging to the Suitors of the said Court; and for applying the Interest arising therefrom, towards answering the Charges of the Office of the Accountant General of the said Court.

No. 17.

9 George III. c. 19.—An Act to empower the High Court of *Chancery* to lay out, upon Government Securities, a further Sum of Money, not exceeding a Sum therein limited, out of the common and general Cash in the Bank of *England* belonging to the Suitors of the said Court; and to apply the Interest arising therefrom towards answering the Charges of the Office of Accomptant General of the said Court.

No. 18.

32 George III. c. 42.—An Act to empower the High Court of Chancery to lay out a further Sum of the Suitors' Money upon proper Securities, and for applying the Interest towards discharging the Expences of the Office of the Accountant General, and for building Offices for the Masters in Ordinary in Chancery, and a Public Office for the Suitors of the said Court, and Offices for the Secretaries of Bank-

rupts and Lunatics, and for buildi[illegible] Repositories for securing the Title Deeds of the S[illegible]itors of the said Court, and the Records and P[illegible]oceedings of the Commissioners of Bankrupts and Lunatics.

No. 19.

36 George III. c. 90. — An Act for the Relief of Persons equitably and beneficially entitled to or interested in the several Stocks and Annuities transferrable at the Bank of *England*.—[14*th. May* 1796.]

[Inserted Pt. III. Cl. XI. No. 1.]

No. 20.

39 and 40 George III. c. 36.—An Act to enable Courts of Equity to compel a Transfer of Stock in Suits, without making the Governor and Company of the Bank of *England*, or the United Company of Merchants of *England* trading to the *East Indies*, or the Governor and Company of Merchants of *Great Britain* trading to the *South Seas* or other Parts of *America*, Party thereto.—[1*st. May* 1800.]

No. 20. 39 & 40 George III. c. 36.

'WHEREAS great Expence arises in Suits in Courts of 'Equity, from the Practice of making the Governor 'and Company of the Bank of *England* Parties thereto, for the 'mere Purpose of compelling or authorizing the said Corpora-'tion to suffer any Transfer of Stock standing in their Books 'to be made which Justice may require:' Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for any of his Majesty's Courts of Equity, before or upon hearing any Cause depending therein, to order the Governor and Company of the Bank of *England* to suffer a Transfer of Stock standing in their Books to be made, or to pay any accrued or accruing Dividends thereon, belonging to or standing in the Names of any Party to a Suit, as such Courts may deem just; or to issue an Injunction to restrain them from suffering any Transfer of such Stock, or from paying any Dividends or Interest accruing or accrued thereon, although such Governor and Company are not Parties to the Suit in which such Decree or Order shall be made; such Courts being satisfied by the Certificate of the Accountant of the said Corporation, duly signed by him as hereinafter is directed, that the Stock required to be transferred is standing in their Books in the Name of the Persons or Person required to transfer the same, or of the Persons or Person to whom they or he are or is the legal Representative; and that after due Service of a short

Any Court of Equity may order the Bank of England to suffer a Transfer of Stock to be made, or to pay Dividends belonging to or standing in the Names of any Party to a Suit, or issue an Injunction to restrain such Transfer or Payment, although the Bank be not a Party, &c.

No. 20. 39 & 40 George III. c. 36.

Order upon the said Governor and Company, or their proper Officer, which shall contain no Recital of their Pleadings, or other Matter than the Title of the Cause, and the ordering Part of such Decree or Order which respects the said Governor and Company, and for which the Sum of eighteen Shillings, and no more, shall be paid, like Process shall issue to enforce such Order or Decree as to enforce them against any Party to a Suit depending in such Court.

On Request of the Clerk in Court and Solicitor of the Party, the Bank shall deliver a Certificate stating the Amount of such Stock or Dividends, &c. for which the Fees herein specified shall be paid.

'II. And for the better enabling any Party to a Suit to 'obtain and produce such Certificate in Court,' Be it enacted, That upon Request in Writing signed by the Clerk in Court (or other Officer answering thereto) and the Solicitor concerned in the Cause for the Party applying, which shall state the Cause, and for what Parties they are concerned, the Governor and Company of the Bank of *England* shall deliver, or cause to be delivered, to the said Clerk in Court or other Officer and Solicitor, or one of them, a Certificate signed by their Accountant, stating the Amount of such Stock or Dividends, and in whose Names or Name such Stock is standing in their Books, and if it be particularly required (but not otherwise) when such Stock or any Part thereof was transferred, and by whom; for the signing of which Request in Writing, there shall be paid to such Clerk in Court, or other Officer, a Fee of six Shillings and eight Pence, and no more, and to such Solicitor, for the drawing, copying, and delivering at the Bank, a Fee of thirteen Shillings and four Pence, and no more, and to the Officer making and delivering such Certificate, a Fee of two Shillings and sixpence, and no more: Provided nevertheless, That nothing herein contained shall extend to any Case where any further Discovery is wanted than what is hereinbefore expressly mentioned, nor to any Case where the said Governor and Company claim any Interest in or Lien upon the said Fund, but that in such Cases it shall be necessary to make them a Party to such Suit as if this Act had never been made; and that if any Special Matter shall arise, which, in the Opinion of the said Governor and Company, shall affect their Interests, or which might be objected against suffering such Transfer of Stock or Payment of Dividends, it shall be lawful for them to state such Matter to the Court by Motion or Petition in such Suit, and that Execution of Process to compel such Transfer or Payment, shall be suspended until final Order shall be made thereon.

Act not to extend to any further Discovery than herein mentioned; nor to any Case where the Bank claim an Interest in the Fund; and the Bank may state their Objections to any Transfer by Motion or Petition.

In Suits now depending where the Bank have put in their Answer, not claiming any Interest in the Stock required to be transferred, Proceedings shall be stopped and the Bill dismissed, &c.

III. And be it further enacted, That in all Suits now depending, in which the said Governor and Company may have put in their Answer, not claiming any Interest in or Lien upon the Stock required to be transferred, no further Proceeding shall be had against them as a Party to such Suits, but that the Bill shall stand dismissed as against them in such Suits; and that in all such Suits an Order may be made, upon Motion or Petition as of course, for the taxing of their Costs already incurred, and for immediate Payment thereof by the Plaintiffs in any such Suits, or any of them, subject however to any fur-

ther Order as between the other Parties to such Suits, respecting the final Payment of such Costs, as by Court in which any Suit may be depending shall be deemed just.

No. 20. 39 & 40 George III. c. 36.

IV. And be it further enacted, That all the several Regulations and Provisions herein before enacted, shall extend, *mutatis mutandis*, to every Case where the United Company of Merchants of *England* trading to the *East Indies*, or the Governor and Company of Merchants of *Great Britain* trading to the *South Seas* or other Parts of *America*, have any Stock standing in the Books of such respective Corporations, which may now be or hereafter may become the Subject of any Suit in Equity, or incidental thereto; saving to the said Corporations respectively the like Right of being made a Party, or applying by Motion or Petition, in such Suits as is before reserved or given to the Governor and Company of the Bank of *England*.

The Provisions aforesaid shall extend to the East India Company and the South Sea Company, where they have Stock standing in their Books, which may become the Subject of a Suit in Equity.

No. 21.

39 and 40 George III. c. 56. — An Act for Relief of Persons entitled to entailed Estates to be purchased with Trust Monies.—[20*th. June* 1800.]

[Inserted Pt. II. Cl. I. No. 30.]

No. 22.

41 George III. c. 90.—An Act for the more speedy and effectual Recovery of Debts due to his Majesty, his Heirs and Successors, in Right of the Crown of the United Kingdom of *Great Britain* and *Ireland*; and for the better Administration of Justice within the same.—[2*d. July* 1801.]

[Inserted ante. Cl. XXIII. No. 21.]

No. 23.

45 George III. c. 75.—An Act to remove Doubts touching Appointments to certain Offices in the Court of Chancery made during the Vacancy of the Office of Register and Keeper of the Register and Registers in that Court.—[27*th. June* 1805.]

No. 24.

19. 45 George III. c. 124.—An Act to amend an Act, passed in the fourth Year of His present Majesty, intituled, "An Act for preventing Inconveniencies arising in Cases of Merchants, and such other Persons as are within the Description of the Statutes relating to Bankrupts, being entitled to Privilege of Parliament and becoming Insolvent;" and to prevent Delay in the entering Appearances in Actions brought against Persons having Privilege of Parliament.—[12th. July 1805.]

No. 24. 45 George III. c. 124.

Appearances may also be put in for Defendants having Privilege of Parliament, in Courts of Equity, on Return of Process of Sequestration.*

'IV. AND whereas in many Cases, Persons having Privilege of Parliament are named as Defendants in 'Suits instituted in Courts of Equity against them, either alone 'or jointly with other Persons, for enforcing against them 'Demands and Duties cognizable in Courts of Equity, and in 'some Cases such Defendants, having Privileges of Parliament, 'have stood out to the Return of Process of Sequestration 'issued against them for enforcing Appearance, and such Pro'cess of Sequestration hath not been found sufficient to enforce 'such Appearance;' Be it therefore enacted by the Authority aforesaid, That, from and after the passing of this Act, in case any Defendant having Privilege of Parliament shall, upon a Return of Process of Sequestration issued against him for not putting in an Appearance to any original or other Bill of Complaint instituted against him in a Court of Equity for enforcing Discovery and Relief, or Discovery alone (as the Case may be)* that then and in such Case such Court upon producing the Return of such Sequestration in Court may, on the Motion or other Application of the Plaintiff in such Cause, appoint a Clerk in Court to enter an Appearance for such Defendant so having Privilege of Parliament, and such Proceedings may be thereupon had in the Cause as if the Party had actually appeared.

[* Query, *neglect to appear.*]

In Default of Answer to Bill in Equity against Persons having Privilege of Parliament, Bill shall be taken *pro confesso.*

'V. And whereas in many Cases it is necessary on the 'Part of the Persons having legal Rights against Persons hav'ing Privilege of Parliament, to proceed by Bill in Equity 'against such Person so having Privilege of Parliament, to ob'tain from them Discovery, on Oath, of Facts intended to be 'used or given in Evidence in Courts of Law against the 'Persons making such Discovery, and in Cases where such Per'sons having such Privilege as aforesaid, shall stand out Pro'cess of Contempt, Parties entitled to such Discovery against 'them have not sufficient Means of compelling or obtaining the 'same in all Cases;' Be it therefore enacted by the Authority aforesaid, That, from and after the passing of this Act, when any Defendant, having Privilege of Parliament, shall have appeared to any Bill filed against him, seeking a Discovery upon Oath, or when an Appearance shall have been entered for such Defendant according to the Provisions aforesaid, and

such Person shall refuse or neglect to put in his Answer to such Bill within the Time for that Purpose allowed by the Rules and Orders of such Court, that then it shall and may be lawful for the Plaintiff in such Suit to apply to the Court for an Order, that such Bill shall be taken *pro confesso* against such Defendant, and upon such Application such Court of Equity shall make an Order, that such Bill shall be taken *pro confesso*, unless the Defendant shall, within eight Days after being served with such Order, shew good Cause to the contrary.

No. 24. 45 George III. c. 124.

VI. And be it further enacted, That when and so soon as any such Order shall have been pronounced by any such Court of Equity for taking such Bill *pro confesso*, that then such Bill in Equity so taken *pro confesso* shall be taken and read in any Court of Law or Equity, as Evidence of the Facts and Matters and Things therein contained, in the same Manner as if such Facts, Matters, and Things had been admitted to be true by the Answer of the Defendant put in to such Bill, and such Bill so taken *pro confesso* shall be received and taken in Evidence of such and the same Facts, and on Behalf of such and so many Persons, as the Answer of the Defendant to the said Bill could and might have been read and received in Evidence of, in case such Answer had been put in by the Defendant thereto, and had admitted the same Facts, Matters, and Circumstances, as in such Bill stated and set forth.

Such Bill shall be read in Evidence as an Answer admitting the Facts.

[For the other Parts of the Act vi. ante. Cl. V. No 2.--Post. Cl. XXVI.]

No. 25.

47 George III. st. 2. c. 40.—An Act to alter the Practice of Courts of Equity, in Suits in which Members of Parliament are Defendants.—[8th. August 1807.]

THAT Justice may be administered more equally in point of Expence, amongst His Majesty's Subjects; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, when any Bill of Complaint or Information shall be exhibited in any Court of Equity, against any Knight, Citizen, or Burgess, of the House of Commons, it shall not be necessary to leave a Copy of the Bill or Information with the Defendant, or at his House or Lodging, or last Place of Abode, as is now used and practised; but it shall be lawful for the Person or Persons exhibiting such Bill or Information to proceed, for want of Appearance or Answer, to sequestrate the Real and Personal Estate of such Knight, Citizen, or Burgess of the House of Commons, although no Copy of the Bill or Information shall have been left with him, or at his House or Lodging, or last Place of Abode, in the same Manner as he might

No. 25. 47 George III. st. 2. c. 40.

When any Bill shall be exhibited in a Court of Equity against a Member of the House of Commons, it shall not be necessary to leave a Copy thereof with the Defendant before Sequestration for Non-appearance.

before the passing of this Act have proceeded, after such Defendant had had a Copy of the Bill or Information delivered to him, or left at his House or Lodging, or last Place of Abode.

No. 26.

47 George III. st. 2. c. 74.—An Act for more effectually securing the Payment of the Debts of Traders.* [14th. August 1807.]

No. 26. 47 George III. st. 2. c. 74.

'WHEREAS it is expedient that the Payment of the Debts of Persons in Trade should be secured more effectually than is done by the Laws now in force;' Be it

* This Act was introduced on the Motion of a Gentleman, to whom the Country is particularly indebted for the Attention which he has devoted, in numerous Instances, to the general Improvement and Amelioration of a legislative System, but whose efforts for that Purpose have excited no common Portion of Opposition.

In the preceding Session of Parliament, he had endeavoured to introduce a general Enactment for subjecting Freehold Property to the Payment of simple Contract Debts; a Proposal which met with a strong, and, as it is well known, a successful Opposition in the House of Commons; in which a Number of Persons of high professional Rank, and whose juridical Talents and Character are of the most superior Order, took a principal Share. Upon the Failure of that Proposal, the present more limited Measure was introduced, and was suffered, as far as my Recollection serves, to pass without any material Opposition. The general Proposal has been since several Times renewed. Upon the first Occasion it encountered a considerable Opposition in the House of Commons, from different Members connected with the Profession of the Law, but received the Sanction of a Majority of the House, and was afterwards more successfully resisted in the House of Lords. In the Session of Parliament which is still continuing (55 George III.), it was suffered to pass the Commons without Comment or Observation; and I had contemplated, with some Satisfaction, the Probability of including an Enactment by which it had been carried into Effect in the present Collection: but it has again failed, after a short and summary Discussion in the House of Lords.

In the ephemeral Accounts of the Proceedings which took place upon its Introduction, I noticed a Declaration of the learned Member whose Exertions upon the Subject have been hitherto unsuccessful, that if the Measure was rejected upon that Occasion, he should never afterwards come forward as its Proposer; but, from the brief View which has been taken of the Subject, it is evident that considerable Progress has been made in removing the Feelings of Repugnance by which the proposed Alteration of the Law has been hitherto resisted; and a Period may perhaps arrive, when the Attention of the Legislature may be again called to the Subject, with the reasonable Hope and Prospect of a different Result.

Feeling as I do, upon a long and habitual Consideration of the Question, that no Alteration of the Law would be more important and salutary in its Consequences, I propose to dilate upon the Subject with some Degree of Particularity; but conscious that those, by the Influence of whose Opinions the Change has been hitherto successfully resisted, are the Persons who by their Stations, their Learning and their Respectability, are most peculiarly qualified to challenge whatever Deference and Assent can be justly paid to the Names and Characters of Individuals, I trust that, in the Freedom of Discussion, I shall not forget the Language or Sentiments of Respect.

I hope it will not be a Deviation from the Profession which I have made, to avow, that I do not consider a general and indiscriminate Appeal to the Wisdom of our Ancestors, and an equally general and unqualified Invective

therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament as-

No. 26. 47 George III. st. 2 c. 74.

on the Dangers of Innovation, as Arguments which can have much Weight in the Scale of rational Inquiry. I am as well aware as those from whom I most differ in Opinion with regard to the present Question, of the Advantage of adhering to an established and existing System, until strong and adequate Reasons appear to justify or require a Deviation from it. But the mere and indiscriminate Reliance upon the Topics which have been alluded to, is not so much calculated to command Assent, as to stifle Enquiry; and the Principle of Opposition which they import is equally applicable to all Proposals whatever, and however beneficial or injurious they may happen individually to be: and if this Sentiment had been at all Times attended with the same commanding Influence which it at present seems to possess, it would have presented an insuperable Obstacle to the most salutary and beneficial Improvements which have taken place in our Legislative System; and in no Instance more strongly and decidedly so, than in the general Abolition of those Feudal Tenures, of which the subsisting Law upon the immediate Matter in Discussion was manifestly the Emanation and Result.

Of the moral Obligation of Individuals to discharge the Engagements which they have contracted, there can only be one Opinion; and as little Doubt can be entertained of the general Propriety of giving to such Obligation the Force and Sanction of Law, when the Nature of the Subject will admit, and there are no adequate Reasons of public Utility to the contrary.

Accordingly, in all Countries, the inforcing the Performance of Contracts, and more particularly the Discharge of Debts recognized by the Law, is a very principal Object of Jurisprudence; and no Person, either morally or legally speaking, is considered as the real Owner of Property to a greater Amount than that which exceeds the total Amount of his Obligations: and the real Question under Consideration is, whether there are any adequate Motives of Civil Policy for conferring on those who may succeed, by Reason of Death, to the Rights of the deceased in Property and Advantage in respect of particular Effects, an Exemption which did not belong to the Author of their Claim; for casting a Benefit upon the Representative which could not have been enjoyed by the Persons whom he represents; and for giving an adventitious Gain without any claim of Merit, and resulting from the Loss and Detriment of those who are not chargeable with any greater Culpability than the want of sufficient Acuteness and Vigilance in the Preservation of their own immediate Interests? The Maxims which, tho' forming Part of a particular System of Jurisprudence, are manifestly founded upon Principles of universal Application—"*Hoc naturâ æquum est, neminem ex alterius detrimento et injuriâ locupletiorem fieri;*" and, "*Melius est favere repetitioni quam adventitio lucro;*" will, by every unsophisticated Mind, be admitted to supply the general Rule; and the Enquiry is reduced to an Examination of the Motives which are considered as sufficient to warrant an Exception.

I do not rely upon any other System of Law as an absolute Authority; but conceive it is an Argument of no inconsiderable Weight, that we are not acquainted with any other System of Jurisprudence, in which the whole Property of a Person deceased was not subject to answer the whole Amount of his Debts.

According to the Roman Law, the Persons who fell within the Description of *sui et necessarii Hæredes*, being the Issue of the deceased, remaining under his Authority, and not emancipated, could not renounce the Character of Heirs, and were strictly chargeable with the Debts; but by the Prætorian Law, which was analogous to our System of Equity, such Heirs were permitted to abstain from the Inheritance, and thereby release themselves from the Obligation. See Institutes, lib. 2. tit. 19. Other Persons, denominated *extranii Hæredes*, whether instituted by Will or taking by Intestacy, had a certain Period for Deliberation; but if they accepted the Inheritance, they were chargeable with the Obligations of the Deceased, without regard to the Amount of his Effects. The Emperor Gordian introduced an Exception in Favor of Soldiers, who, if they incautiously took upon themselves the Succession, were liable only to the Extent of the Property; and Justinian extended this Privilege to all Persons in

No. 26.
47 George III. st. 2. c. 74.
When a Trader shall die entitled to any Real Estate in Lands,

sembled, and by the Authority of the same, That, from and after the passing of this Act, when any Person, being at the Time of his Death a Trader within the true Intent and Meaning of the Laws relating to Bankrupts shall die seised of or entitled to any Estate or Interest in Lands, Tenements,

general by Law, Code, lib. 6. tit. 30, *de Jure deliberandi*, Law 22; whereby he introduced the Benefit of Inventory, under which, if the Heir, within 30 Days, began with proper Formalities to make an Inventory of the Estate of the Deceased, and completed it within 60 days more, he was only chargeable with the Amount of the Property belonging to the Deceased. The Period was extended to a Year in case of the Absence of the Heir. In case the Inventory was not made within the Term and in the Manner prescribed, the Heir was deemed to have accepted the Succession generally, and was liable, without Distinction, to the Debts of the Deceased. And this System has been followed in most of the modern States of Europe which have adopted the general Principle of the Roman Law. Such was the Law of France previous to the Revolution, although differently modified in different Provinces. In the more recent Code several very judicious Regulations are adopted, with respect to the Manner of taking and verifying the Inventory of the Property.

The same Law prevailed in the United States; Vinnius ad Inst. 2, 19. It is Part of the Prussian code; Part 2, B. 7, tit. 15. It is the Law of Scotland; Erskine's Principles, B. 3, tit. 8. By the general Law of Germany, the Heir is not bound beyond the Amount of the Successions, although he has not made an Inventory; Heneccius El. Juris Germanici: but in no country, except our own, does it appear to have been the Law, that the Property of the Deceased should be enjoyed without being subject to the Charge of his Obligations. In most of the Countries which have been mentioned, the Feudal System, from which the Exemption of Lands in England is evidently derived, remained in Vigour, with Reference to the Exercise of seigniorial Rights, long after its direct Operation had, in this Country, been put an end to by legislative Authority.

With regard to the Progress of the Law connected with this Subject, in our own Country, it is manifest that, in the early Periods of our History, the Transactions of Commerce were of very limited Importance, and that the Ability to perform the Feudal Services was the Object principally regarded by the Law, with Respect to the Tenure of Lands; but as the Magnitude and Consideration of Subjects connected with Personal Property and Contracts advanced, the Legislature shewed a corresponding Disposition to support their Consequence. The Introduction of the Writ of Elegit, subjecting the Moiety of Lands to Execution in Satisfaction of Judgments, by the Statute of 13 Ed. I. at a Period when Feudal Tenures and Services retained their primary Importance, was a bold Deviation from the subsisting Law, and a manly Sacrifice of Prejudice to Justice. The same Spirit was evinced by the Institution of Statutes Merchant in the same Year, and of Statutes Staple in the Reign of Edw. III; and was carried to a greater Extent by 23 Henry VIII. which extended the Benefit of the Statute Staple to all the King's Subjects in general.

The Reign of Henry VIII. is also distinguished by two other important Novelties; or, as perhaps they would be called by those who in that day were fearful of calling in Question the Wisdom of their Ancestors, Innovations—the Statute of Wills, by which a Person was enabled voluntarily to do Justice to the Claims of his Creditors, in subjecting his Lands to the Payment of Debts; and the Introduction of the Bankrupt Law.

The Statute 34 and 35 Henry VIII. c. 4, by which this last important Alteration in the Law was established, gave Power to certain great Officers of State "to take order respecting the Bodies, *Lands* and Goods of those who, craftily obtaining into their Hands great Substance of other Men's Goods, do suddenly flee to Parts unknown, or keep their Houses, not minding to pay or restore to any their Creditors their Duties, but at their own Wills and Pleasures consume the Substance obtained by Credit of other Men for their own Pleasure and delicate Living, against all Reason, Equity and good Conscience."

Hereditaments, or other Real Estate, which he shall not by his last Will have charged with or devised subject to or for the Payment of his Debts, and which before the passing of this Act would have been Assets for the Payment of his Debts due on any Specialty in which the Heirs were bound, the same

No. 26. 47 George III. st. 2. c. 74. &c. the same shall be Assets to be administered in Equity

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It is observable that this Act is not confined, like the more recent Statutes respecting Bankruptcy, to the Case of Persons engaged in Trades of a particular Character and Description, but is generally applicable to all Debtors whatever: and notwithstanding all the Commendation which may have been bestowed upon later Statutes, on account of their more confined and limited Operation in this Respect, I cannot but think that the Generality of the original Statute was more conformable to the Principles of Justice and Utility. — See Letter to Sir Samuel Romilly, (subjoined to Class XXVI. post.) Sec. III.

The principal View of the Statutes of Elizabeth and James upon the Subject of Bankruptcy, seems to have been to frame, with respect to the Persons who were the Objects of those Statutes, a more detailed and particular Provision for giving Effect to the important Principles established by the Statute of Henry VIII.

It is not material, for the present Purpose, to advert more particularly to these Statutes, than to observe that, when personal Transactions and Engagements were, as compared to the present Period, in their Infancy, and the old Relations of Lord and Tenant, though of diminished, were of considerable Importance, the Relief of Creditors was considered as a Matter of so much Consequence, that not only the Freehold and Copyhold Estates were subjected to the Operation of the Bankrupt Law, but that, by the Statute of 21 Jac. I. all Estates Tail, of which the Bankrupt had the Power of Disposition, were also placed in the same Predicament.

The next Provision which it occurs to me to Notice is that in the Statute of Frauds, subjecting Trust Estates to the Payment of Specialty Debts. This was succeeded by the Statute against fraudulent Demises, 3 and 4 William and Mary, c. 14, which, giving the same Remedy to a Specialty Creditor against a Devisee as against an Heir, so far favours the general Object of charging Lands with the Payment of simple Contract Debts, as to make an Exception in respect of Lands devised for the Payment of any just Debts; and the Courts of Equity, in supporting the Provisions of the Exception, have shewn a Disposition to place Specialty and simple Contract Creditors upon an equal Footing, by not permitting the former to derive any Benefit from a general Devise for the Satisfaction of Debts, until the latter have been placed upon an equal Footing with them, in respect of the Satisfaction received from the personal Assets.

The Disposition to favour the subjecting real Estate to the Payment of Debts was further manifested by the Statute 25 Geo. II. c. 6, by which, in consequence of the Doubts that had existed respecting the Term *credible Witnesses* in the Statute of Frauds, it is provided, that Creditors who had attested or should thereafter attest Wills, charging Lands with the Payment of Debts, should be admitted as Witnesses to such Wills.

The same Spirit prevailed in the compulsory Clauses of 32 George II. c. 5, (usually called the Lords' Act) and the several Acts for the Extension thereof, by which Debtors in Execution are compellable, at the Instance of their Creditors, to make a Conveyance of all their Property, under Pain of Transportation. It would have seemed to be a more commodious Course to have given an immediate Remedy against the Property itself. I remember an Instance at Chester Assizes, of a Person receiving Sentence of Transportation, for obstinately refusing to comply with the Provisions of this Act.

The Statute to which this Note is subjoined completes the Series of Legislative Enactments connected with the Subject under Discussion.

The Courts of Justice have certainly been in no wise backward in giving full Effect to all the Dispositions, either of the Law itself, or of individual Testators, in favour of the general Object which is the Subject of Consideration. Lord Mansfield (who, after allowing every reasonable Exception to some of his particular Views, was, beyond all Question, one of the most

No. 26.
47 George III. st. 2. c. 74.
for Payment of all his Debts, &c.

shall be Assets to be administered in Courts of Equity for the Payment of all the just Debts of such Person, as well Debts due on Simple Contract as on Specialty; and that the Heir or Heirs at Law, Devisee or Devisees of such Debtor, shall be liable to all the same Suits in Equity, at the Suit of any of the

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enlightened Magistrates that ever adorned the English Tribunals) observed in the famous Case of Wyndham *v.* A. Chetwynd, 1 Bur 430—"Every honest Man should make that Charge [for the Payment of Debts] in his Will. He who omits it may be said to sin in his Grave."

I have already adverted to the Dispositions of Courts of Equity to afford simple Contract Creditors the full Benefit of a Charge on Lands, by the Distinction established with respect to legal and equitable Assets.

In the Construction of Wills the same Inclination has been very strongly evinced. In Thomas *v.* Brittnell, 2 Ves. 313, Sir J Strange, Master of the Rolls, speaking of a particular Question of Construction, said, that he had no Doubt but that the real Estate would be subject to the Payment of Debts, not from any express Mention made, that they should be a Charge on the real Estate, but from that Construction the Court makes for the Benefit of Creditors, and that Men should not sin in their Graves.

The same Disposition was recognized and acte[illegible] Lord Th[illegible] in Ridney *v.* Cousmaker, 1 Vesey, jun. 440, where he said—"For subjecting Land to Debts very little is sufficient. The Court has leaned that Way, if we may be allowed to say so." Lord Loughborough, on the Rehearing of the same Cause, 2 Vesey, jun. 268, said—"There is no Reason, in my Mind, to doubt that the Court has put a Construction upon this Will, not only consistent with the Principles of natural Justice, but with the Intention of the Testator. I cannot impute to him the Disposition his Family imputes to him, to die, leaving an ample Fortune, without taking Care to provide for the Payment of his Debts: less Words would enable the Court to say he intended the Property to be taken as personal, especially for the pious Purpose of paying his Debts."

The Inclination of the Courts of Equity in this Respect was still more strongly marked in the Case of Kightley *v.* Kightley, 2 Ves. jun. 328, where the same Words in the same Sentence, "First, I will and direct that all my Debts, Legacies, and Funeral Expences shall be fully paid," applied without any Distinction to Debts and Legacies, were held to constitute a Charge for the Debts and not for the Legacies. The Master of the Rolls (Sir R. P. Arden) said, "The Principle is perfectly different, the one being purely voluntary, the other obligatory. Whenever a Man makes a Will, he is supposed to do that which Conscience obliges him to do; and if he shews an Intention that his Debts shall take place of every other Disposition, and that he meant they should be paid, the Court will strictly inforce that Intention. The same Principle will not apply to Legacies." And I apprehend that this Decision is admitted in the Practice of Courts of Equity, as a clear and undoubted Authority.

There are other important and well-known Instances, in which Courts of Equity have gone still farther in effectuating the same general Purpose. By the Law of the Land, a Copyhold Estate cannot (or at least when this Note was first written could not) pass by Will, unless there is a previous Surrender [illegible]

pelled to [illegible] inoperative. So in Case of supplying the defective Execution of a Power, an Authority is given to charge or dispose of an Estate in a certain Mode, and with Circumstances which are attached to the Authority as Conditions for its Exercise; and as such are, by the Person creating the Authority, essentially incorporated with, and form a constituent Part of, the Authority itself. But when Payment of Debts is the Purpose for which the Authority is exercised, the Conditions attached to the Exercise of it are disregarded, and treated as absolutely immaterial

But the most striking Instance of the Interference of Courts of Equity upon this Subject, is in Cases where a Party has a general Power of Appointment,

Creditors of such Debtor, whether Creditors by Simple Contract or by Specialty, as they were before the passing of this Act liable to at the Suit of Creditors by Specialty, in which the Heirs were bound: Provided always, that in the Administration of Assets by Courts of Equity, under and by virtue of this

No. 26. 47 George III. st. 2. c. 74. Creditors by Specialty in which Heirs are

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of which, if it is unexecuted, the Creditors can have no Advantage; but which, if actually executed in favour of other Parties, the Creditors are entitled to the Benefit of in Opposition to the actual Objects of the Appointment: so that an Act, without the voluntary Exercise of which the Creditors can have no Claim upon the Property in question, is laid hold of for their Benefit, in direct Contravention of the Purpose and Intention for which alone it has been performed.

It would be foreign from my present Purpose to enquire whether the several Doctrines above enumerated as prevailing by Courts of Equity, and which are matters of daily and familiar Occurrence, are consistent with the just and proper Limits of a purely judicial Authority. I think that, in later Times, any Attempts of an analogous Nature would have been discouraged, as too much invading the Province of Legislation. The only Reason for referring to them upon the present Occasion, is the Evidence which they furnish of the great Importance that our Tribunals must have attached to the End, when they have been induced to sanction such very strong and extraordinary Means to effectuate it; clearly proving that the Object, which so many unsuccessful Efforts have been made to attain, has not only the Support of Theory and Speculation, but the more favourite Sanction of Authority; and however questionable the original Introduction of these peculiar Doctrines of Courts of Equity may have been in Principle, I am not aware that the Effects of them, in point of Experience, have been found to be prejudicial.

After so many Instances of the Interference of the Legislature, and the Disposition of the judicial Tribunals to effectuate the Purpose of subjecting the whole Property of a Debtor to the honest Claims of his Creditors, it might reasonably have been expected, that a direct Proposal to accomplish so beneficial an Object by the general Operation of the Law would have been received with considerable Approbation. It would certainly have been difficult to anticipate that it would have had to encounter the Opposition which it has in Fact experienced.

As a Motive for the proposed Alteration of the Law, strong Instances have been cited, in which Persons contracted Debts to a large Amount, for the Purpose of acquiring Property in Land; and in order to secure the Acquisition to their Posterity, have terminated their Lives by Acts of Suicide. But if only Cases of this Description, or others having any Analogy to it, were to be guarded against, so rare a Mischief might be permitted to remain without any material detriment to the Community. From the Attention which I have given to the Matter under Discussion, in adverting to the testamentary Dispositions which have been the Subject of judicial Inquiry, as well as to those which have fallen under my own Observation, during a long Connection with the Profession of the Law, I am satisfied that the Instances in which a Debtor purposely and deliberately sacrifices the Interests of his Creditors to the Object of enriching his Family are very unfrequent indeed, and that the Failure of Justice to the Creditors is almost invariably occasioned by mere Delay and Inattention; by a Confidence in the Adequacy of the Funds which are legally applicable to the Satisfaction of Creditors; or by the Want of technical Skill in the Persons by whom the Instruments of testamentary Disposition are prepared; and that, in adopting the proposed Alteration, the Law would, in a great Majority of Cases, accord with the Wishes which the deceased Owner of the Property would really have entertained.

It remains to consider the special Reasons adduced for resisting an Alteration of the Law, the Effect of which would apparently be to complete and perfect that System of substantial Justice, which the several Statutes and judicial Determinations that have been alluded to have so manifest a tendency to promote.

Having already disposed of the mere common-place Invective upon the Mischiefs of Innovation, the first Objection that occurs, and the one which

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47 George III. st. 2. c. 74.
bound shall be first paid.

Act, all Creditors by Specialty, in which the Heirs are bound, shall be paid the full Amount of the Debts due to them, before any of the Creditors by Simple Contract or by Specialty in which the Heirs are not bound, shall be paid any Part of their Demands.

is most insisted upon, is, "That the Creditors have no Reason to complain, as they could not, according to the existing Law, have computed upon having any Claim on the real Estates of their Debtors after their Decease; that it is their own Fault that they did not take care to procure Securities of a higher Nature; and that, "*Vigilantibus, non dormientibus, Jura subveniunt.*"

Strongly as this Objection has been urged, and much as it has been insisted upon, it does not appear to me to be of very considerable Weight. In the ordinary Transactions and Business of Society, it is necessary that Persons should follow the ordinary Course of Proceeding; and the excessive Precaution which would impede the Business of Life by minute and intricate Calculations on the several Processes of the Law, or on the Possibility of the Death of a Debtor before the Discharge of his Debt, upon his being insolvent in respect of personal Assets, but entitled to adequate Freehold Property, which, by reason of his Intestacy, or his Omission to make a just Provision for the Payment of his Debts, is a Caution which would not be very beneficial to Society, and would manifestly be detrimental to the Individual. —Engagements are contracted with Reference to the general Expectation of their being performed, and the general legal Powers of enforcing their Performance. That it is meet and expedient that they should be performed, is an undisputed and self-evident Proposition. That the Legislature and Courts of Judicature have acted upon the Principle of inforcing and facilitating their Performance, is manifest from the Sketch which has been traced of their Proceedings. It is readily admitted that when, of two innocent Persons, a Loss and Detriment must necessarily fall upon the one or the other, the Advantage should be fairly given to him who has used the greatest Degree of Vigilance, by either taking a specific Security, or an Obligation of a higher Nature; but when the Question is entirely between a Case of Loss, Detriment and Prejudice on the one Side, and a purely adventitious Gain and Benefit on the other, it is very difficult to discern an adequate Reason for subjecting the Creditor, who has merely omitted to take an unusual and extraordinary, and, perhaps, an inconvenient Precaution, to the Penalty of forfeiting his just and equitable Rights, for the mere Purpose of enriching the Heir or Devisee of a deceased Debtor, whose Property would have been legally subjected to the Discharge of his Obligations, if his Creditors had found it necessary to have had Recourse to legal Proceedings against him, and had brought them to a Conclusion during his Life. In short, there does not appear, in the Maxim which has been quoted, any adequate Reason to decline doing that Justice by the general Disposition of the Law, which is so much encouraged and promoted as resulting from the particular Dispositions of the Individual, or for involving an honest Creditor in Loss and Ruin, in order to constitute an opulent Heir to an insolvent Ancestor.

It has been further urged against the Measure in Question, that if the Principles upon which the Alteration of the Law is proposed are admitted, they would equally extend to the Cases of Estates Tail and Copyholds; but certainly the Extension of the Measure to these would not be a necessary Consequence of its Application to Freehold Property. If it is wise and politic that these Estates should continue to be exempt from Liability to Specialty Debts, there certainly would be no Apprehension of subjecting them to Debts by simple Contract. I am not aware that any public Inconvenience has arisen from these Estates having been made subject to the Operation of the Bankrupt Laws, of which there has now been an Experience of nearly three Centuries. I certainly think it would be a material Improvement of the Law, if Copyhold Estates were equally liable to the Process of the Law with Estates of Freehold; the substantial Interests of the Lord being effectually protected. Estates Tail stand upon a particular Footing; and I am not at present prepared to state that the Extension of the Law to them would upon the whole be a desirable Measure.

II. Provided also, and be it further enacted, That nothing in this Act contained shall extend or be deemed or construed to extend to repeal, or alter, an Act of Parliament made in *Ireland* in the thirty-third Year of the Reign of King *George* the Second, intituled, "An Act for repealing an Act passed

No. 26. 47 George III. st. 2. c. 74.

Act not to repeal Irish Act of 33 G. 2. c. 14.

If the Matter were reduced to the Dilemma, that either Freehold Estates in Fee-simple must be exempt from the general Liability, or that entailed and Copyhold Estates must be subject to it, I conceive that the great Principles of Utility would be more effectually promoted by the general Comprehension of the Whole to meet the Purposes of Justice, than by the general Exemption of the Whole in respect of the special Favour which is claimed in respect of Considerations applicable to the particular Cases alluded to. But certainly there is no such Dilemma in the Case; and the general, as well as the particular Liability, may be left to stand or fall, according to their own respective Merits.

The great additional Labour which would be imposed on Courts of Equity is another Objection to the proposed Liability. I can by no means accede to the Principle of this Objection; for if the Measure in Question be in its own Nature useful and expedient, the additional Labour which may be imposed upon any particular Tribunal is not an adequate Reason for declining to adopt it; and if the Number of judicial and ministerial Appointments should be thought inadequate to the Performance of the Functions which the Good of the Community may require, an Addition may be made, according to the Nature and Importance of the Exigency. The recent Appointment of an additional Judge in the Court of Chancery appears to me to have been founded upon Principles of great Expedience; and I am not competent to form a Judgment of the particular Regulations connected with that Appointment. But, waving this Discussion, and admitting the Objection to be just in point of Principle, I think it is unfounded in respect of Probability, and that a Direction so perfectly of course as the taking an Account of real and personal Assets, and Specialty and simple Contract Debts, could not reasonably be expected to impose such an additional Burden upon the Judges of Courts of Equity, as should prevent the Adoption of a Measure, admitted in other Respects to be salutary and beneficial.

The Inquiry as to the Existence or Non-existence of Debts which are claimed as affecting Property already liable, certainly forms no very great Proportion of the Business by which the judicial Department of our Courts of Equity is at present occupied.

The only remaining Objection which I am aware of is founded upon a Regard to the Trial by Jury, and the Inexpedience of any Measure which may give an Accession of Employment to Tribunals in which that Mode of Inquiry does not prevail. Important and invaluable, however, as this Course of Proceeding unquestionably is, within its proper Sphere and Limits, it would be carrying our Veneration for it much too far, to object to any other Mode of Investigation for the Accomplishment of an Object admitted to be beneficial in its Nature, and for which such Trial is confessedly inadequate.

The Trial by Jury, by some of its essential Constituents, can only be applied to a Conflict between two contending Parties upon precise and definite Points; and where the Object of even such a Contest is complicated and multifarious, the limited Time which can be devoted to it, renders it in general impossible to do complete and adequate Justice; and by a Recommendation, having the Force of a Command, the Matter is almost invariably referred to the Decision of a private Tribunal. But to arrange the various Interests of various contending Parties, and to ascertain, apportion and administer the common Fund in which they have an Interest, is a Purpose to which the Functions of a Jury are manifestly inapplicable and inadequate: and in case the Relief in Question is in itself proper and desirable, it would be a wanton Sacrifice of the Principal to the Accessary, of the End to the Means, to withhold the Application of it, merely because, from its Nature, it cannot be administered in the particular Mode which, in other Cases of a Character perfectly dissimilar, is admitted to be peculiarly beneficial.—Before dismissing this Part of the Subject, it is a Matter not to be overlooked, that,

No. 26.
17 George III. st. 2, c. 74.

in this Kingdom in the eighth Year of the Reign of King *George* the First, intituled, "An Act for the better securing the Payment of Bankers' Notes, and for providing a more effectual Remedy for the Security and Payment of Debts due by Bankers."

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although the general Course of Relief must necessarily be administered by means of a Court of Equity, any particular Questions respecting the Existence or Non-existence of a disputed Debt, upon which there is a fair and reasonable Doubt, is, like all other controverted Facts, referred to the proper Tribunal of a Jury; and that in a Manner best calculated to produce a direct and immediate Decision upon the very Point in Controversy, divested of all the adventitious and incidental Matter, by which, in other Cases, the proper Object of the Inquiry is liable to be obstructed and embarrassed: and that no such prejudicial Consequences are, in point of Experience, found to result from the existing Administration of the Law in respect of Debts charged upon real Estates by Will, as are justly calculated to excite a constitutional Jealousy against imposing a similar Charge by the general Operation of the Law.

The preceding Observations were committed to Writing recently after the Rejection of the Measure in Question, in the Session of 1815. The Subject was again introduced to the Notice of Parliament, in the following Session, by the same Gentleman who had already made so many unsuccessful Efforts respecting it; upon which Occasion he took a Review of the Objections noticed in the preceding Observations, in many Respects according with that which had occurred to myself. The Proposal again succeeded in the Commons, and was again defeated in the Lords, but with so little Discussion, that no Observations respecting it have been, through the usual Channels, communicated to the Public.

No. 27.

52 George III. c. 32.—An Act for the Relief of Infant Suitors in Courts of Equity, entitled to Stock or Annuities in any of the Public or other Funds, transferrable at the Bank of *England*.—[20*th*. *April* 1812.]

[Inserted Pt. III. Cl. XI. No. 2.]

No. 28.

52 George III. c. 158.—An Act to extend the Provisions of an Act passed in the Thirty-sixth Year of the Reign of His present Majesty, for the Relief of Persons equitably entitled to Stocks and Annuities transferrable at the Bank of *England*, and of an Act passed in this present Session for the Relief of Infant Suitors entitled to the like Stocks and Annuities, to all other transferrable Stocks and Funds.—[29*th*. *July* 1812.]

[Inserted Pt. III. Cl. XI. No. 3.]

No. 29.

53 George III. c. 24.—An Act to facilitate the Administration of Justice.*—[23d. March 1813.]

No. 29.
53 George III. c. 24.

His Majesty empowered to appoint an additional Judge Assistant to the Lord Chancellor, to be called Vice Chancellor of England.

'WHEREAS the Number of Appeals and Writs of Error 'in Parliament has of late Years greatly increased, and 'it has become necessary that a larger Proportion of Time 'should be allotted for hearing and determining such Appeals 'and Writs of Error than has usually been employed for that 'Purpose; and therefore as well as for the better Administra- 'tion of Justice in the several judicial Functions belonging to 'the Offices of the Lord High Chancellor, Lord Keeper, or 'Lords Commissioners for the Custody of the Great Seal of the 'United Kingdom, it is expedient that another Judge should 'be appointed to assist in the Discharge of such judicial Func- 'tions;' Be it therefore enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for His Majesty, his Heirs and Successors, to nominate and appoint from time to time, by Letters Patent under the Great Seal of the United Kingdom, a fit Person, being a Barrister at Law of fifteen Years standing at the least, to be an additional Judge Assistant to the Lord High Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal of the United Kingdom for the time being, in the Discharge of the judicial Functions of their respective Offices, and to be called *Vice Chancellor of England*; to hold such Office during his good Behaviour.

To hear and determine Causes in Chancery of England either in Law or Equity.

II. And be it further enacted by the Authority aforesaid, That such Vice Chancellor shall have full Power to hear and determine all Causes, Matters and Things, which shall be at any Time depending in the Court of Chancery of *England*, either as a Court of Law, or as a Court of Equity, or incident to any ministerial Office of the said Court, or which have been or shall be submitted to the Jurisdiction of the said Court, or of the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal, for the time being, by the special Authority of any Act of Parliament, as the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal, shall from time to time direct; and all Decrees, Orders and Acts of such Vice Chancellor, so made or done, shall be deemed and taken to be respectively, as the nature of the case shall require, Decrees, Orders and Acts of the said Court of Chancery or of such incident Jurisdiction as aforesaid, or under such special Authority as aforesaid, and shall have Force and Validity, and be executed accordingly; subject nevertheless in every case to be reversed, discharged or altered by the Lord Chancellor, Lord Keeper or Lords

Decrees valid, &c.

* See some Observations on this Subject in the Appendix, No. 2.

No. 29.
53 George III. c. 24.

Commissioners for the Custody of the Great Seal, for the time being; and no such Decree or Order shall be enrolled until the same shall be signed by the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the time being: Provided always, that such Vice Chancellor shall have no Power or Authority to discharge, reverse or alter any Decree, Order, Act, Matter, or Thing made or done by any Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal, unless authorized by the Lord Chancellor, Lord Keeper or Lords Commissioners for the time being so to do; nor any Power or Authority to discharge, reverse or alter any Decree, Order, Act, Matter or Thing made or done by the Master of the Rolls.

Vice Chancellor to sit in Absence of Lord Chancellor, &c. or in a separate Court at same time as Lord Chancellor is sitting.

III. And be it further enacted by the Authority aforesaid, That such Vice Chancellor shall sit for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal, whenever they shall respectively require him so to do; and shall also at such other times as the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal shall direct, sit in a separate Court, whether the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal, or the Master of the Rolls shall be sitting or not; for which Purpose the said Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal respectively, shall make such Orders as to them respectively shall appear to be proper and convenient from time to time as Occasion shall require.

Rank and Precedence.

IV. And be it further enacted by the Authority aforesaid, That such Vice Chancellor shall have Rank and Precedence next to the Master of the Rolls.

Secretary, Trainbearer and Usher.

V. And be it further enacted by the Authority aforesaid, That it shall be lawful for his Majesty, his Heirs and Successors, in and by such Letters Patent as aforesaid, or any other Letters Patent under the Great Seal of the United Kingdom, to direct that such Vice Chancellor shall have a Secretary, Trainbearer and Usher; and that the Secretaries and Deputy Registers and other Officers appointed to attend the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal, shall attend such Vice Chancellor when sitting for the Lord Chancellor, Lord Keeper or Lords Commissioners respectively, and also when sitting in his separate Court, as circumstances shall require, and as the said Lord Chancellor, Lord Keeper or Lords Commissioners respectively shall order and direct.

May be removed.

VI. Provided always, and be it further enacted, That it shall be lawful for His Majesty, his Heirs and Successors, to remove any such Vice Chancellor from his Office, upon an Address of both Houses of Parliament.

Oath.

VII. And be it further enacted by the Authority aforesaid, That the said Vice Chancellor, previous to his executing any of the Duties of his Office, shall take the following

Oath, which the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal, or the Master of the Rolls for the time being, are hereby respectively authorized and required to administer; *videlicet*,

No. 29. 53 George III. c. 24.

'I do solemnly and sincerely promise and 'swear, That I will duly and faithfully, and to the best of 'my Skill and Power, execute the Office of Vice Chancellor 'of *England*.

So help me God.'

[VIII. Money of Suitors in Chancery not exceeding £60,000 lying unemployed at the Bank, placed out on Government, &c. Security; and from Interest, Salaries of Vice Chancellor, &c. to be paid quarterly.]

[IX. Changing Securities.]

[X. Money placed out, called in for answering the Demands of Suitors.]

[XI. Costs, &c. paid from Interest and Dividends.]

[XII. Additional Sum of £2,500 set apart and paid quarterly out of Fees of Lord Chancellor, &c. and carried to Account of Aggregate Fund.]

Fees not to be received.

XIII. And be it further enacted, That the said Vice Chancellor and his Officers respectively shall not take or receive, or demand any Fee or Reward whatsoever, over and above the Salaries hereinbefore directed to be paid to them respectively, for or in respect of any Business which shall be done by such Vice Chancellor or his Officers, by virtue of the Powers and Authorities given by this Act; but that all Fees for such Business shall be taken and received by the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal for the time being, or his or their proper Officers, in such and the same Manner as if such Business had been done by such Lord Chancellor, Lord Keeper or Lords Commissioners respectively.

No. 30.

54 George III. c. 14.—An Act to provide that Property vested in the Accountant General of the High Court of Chancery as such, shall, upon his Death, Removal or Resignation, vest from Time to Time in those who shall succeed to the Office.—[6th. December 1813.]

No. 30. 54 George III. c. 14.

On Resignation, &c. of Accountant General, Property to vest in Successor.

'WHEREAS it is expedient to provide by Law as is 'hereinafter enacted;' Be it therefore enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That in all cases in which, by virtue of this Act or of any Act of Parliament, Conveyance, Assignment, Transfer, Obligation or Security, any Interest in Real or Personal Estate, Effects or Property, hath been or shall be

No. 30. 54 George III. c. 14.

vested in, conveyed, assigned, transferred, made payable to, or secured to the Accountant General of the High Court of Chancery as such Accountant General, and in respect of his Office as such, the same, upon the Death, Removal or Resignation of each Accountant General from time to time, and as often as the case shall happen, and the Appointment of a Successor, shall vest, subject to the same Trusts as the same were before respectively subject to, in the succeeding Accountant General by force of this Act, and without any Act whatever to be done by the Accountant General resigning or removed, or by the Heirs, Executors or Administrators of any Accountant General resigning, removed or dying, or any Person or Persons claiming under him, them or any of them, and notwithstanding any such Interest may have been expressed to have been vested in, conveyed, assigned, transferred, made payable to, or secured to the Accountant General, his Heirs, Executors, Administrators and Assigns, or any of them, and shall and may be proceeded upon in the Name of such succeeding Accountant General by any Action or Suit in Law or Equity, or in any other manner as the same might have been proceeded upon by or in the Name or Names of the Heirs, Executors or Administrators of such former Accountant General.

Property heretofore vested in any former Accountant General vested in present Accountant General.

II. And be it further enacted by the Authority aforesaid, That in all cases in which by virtue of any Act of Parliament, Conveyance, Assignment, Transfer, Obligation or Security, any Interests in any Real or Personal Estate, Effects or Property have been heretofore vested in any former Accountant General as Accountant General, and in respect of his Office as such, and which may now remain vested in his Heirs, Executors or Administrators, notwithstanding the same was vested in him as Accountant General in respect of such his Office, all such Interests shall, by force of this Act, from and after the passing thereof, be and the same are hereby vested in the present Accountant General as Accountant General, and shall and may be proceeded upon in the Name of the present Accountant General, or the Accountant General hereafter for the time being in any Action or Suit in Law or Equity, or in any other manner as the same might have been proceeded upon by or in the Name or Names of the Heirs, Executors or Administrators of such former Accountant General.

Acts done by Accountant General under any Order of Court valid.

III. And be it further enacted by the Authority aforesaid, That all Acts done or to be done by the present or any future Accountant General, under any Order or Orders, Decree or Decrees, of the Court of Chancery, touching any Real or Personal Estate, Property or Effects, the Interest wherein respectively is by this Act vested or intended to be vested in the present Accountant General, and in succeeding Accountants General, shall by force of this Act be deemed and taken to be valid and effectual; and also, that all Acts heretofore done by any Accountant General for the time being, in Obe-

No. 30.
54 George III. c. 14.

dience to any such Order or Orders, Decree or Decrees, touching any Real or Personal Estate, Effects or Property, the Interest wherein respectively might have remained at the time such Acts were done in any former Accountant General, who had resigned or had been removed, or in the Heirs, Executors or Administrators of any then deceased Accountant General, shall by force of this Act be deemed and taken to be valid and effectual.

ADDENDUM.

PART IV. CLASS III.

No. 44.

56 George III. c. 102.—An Act to amend the Act of the Fifty-third Year of his present Majesty, intituled "An Act for the Relief of Insolvent Debtors in England;" and to give further Powers to the Court appointed by the said Act.—[1st. *July* 1816.]

No. 44.
56 George III.
c. 102.

53 G. 3. c. 102.

WHEREAS an Act passed in the Fifty-third Year of his present Majesty's Reign, intituled "An Act for the Relief of Insolvent Debtors in England;" and it is expe- 'dient to amend the said Act, and to distinguish between the 'cases of such Insolvent Debtors who shall have been guilty 'of gross Injustice towards their Creditors, and the cases of 'those who shall not have so conducted themselves;' Be it therefore enacted and declared by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act if it shall appear to the Court established by virtue of the said recited Act, upon the Examination of any Prisoner, or otherwise, that such Prisoner has acted with gross Injustice towards his or her Creditor or Creditors, either in contracting any Debts, or entering into any Engagements, without any fair Prospect or probable Means of paying such Debts or fulfilling such Engagements, or by squandering or otherwise improperly disposing of his or her Monies, Effects or other Property, which he or she might have applied in paying such Debts or fulfilling such Engagements, either wholly or in Part, such Prisoner shall not be entitled to his or her Discharge by virtue of the said recited Act, unless the whole of the Creditors of such Prisoner shall consent to his or her Discharge, or such Prisoner shall have been confined within the Walls of any Prison for the Space of Five Years, to be computed from the time when such Prisoner shall have applied for his or her Discharge.

In case Prisoner has acted with gross Injustice, &c. he shall not be entitled to his Discharge, unless the whole of the Creditors consent.

No. 14. 56 George III. c. 102.

II. And be it further enacted, That in every Notice directed to be given by the said recited Act, by any Prisoner, to his or her Creditor or Creditors, such Prisoner shall declare that he or she is ready and willing to submit to be fully examined touching the Justice of his or her Conduct to his or her Creditor or Creditors.

Declaration by Prisoner.

III. And be it further enacted, That from and after the passing of this Act it shall not be lawful for the said Court to order that any Prisoner shall be examined at any Session of the Peace for the Counties of *Middlesex* or *Surrey*, or for the Cities or Liberties of *London* and *Westminster*, or by any one or more Justice or Justices of the Peace, out of Session, for any County, Riding, Division or Place whatsoever.

Order by the Court for Examination of Prisoner.

IV. And be it further enacted, That the Court established by virtue of the said recited Act, and the Courts of Quarter Sessions, shall examine each and every Prisoner touching the Justice of his or her Conduct towards his or her Creditor or Creditors.

Quarter Sessions to examine Prisoner;

V. And be it further enacted, That the Courts of Quarter Sessions for any County, Riding, Division or Place, at which any Prisoner shall be examined, shall declare in open Court whether such Prisoner has acted with gross Injustice towards his or her Creditor or Creditors, or not, and shall also certify their Determination thereon to the Court established by virtue of the said recited Act.

and declare in open Court whether he has acted with Injustice or not.

VI. Provided always, and be it further enacted, That no Prisoner hereafter shall be entitled to be examined under the Provisions of the said recited Act at any Quarter Sessions except at such Quarter Sessions for such County, Division, Riding or Place, and at such time whereof he shall have given Notice to each and every of his or her Creditors; and no Prisoner who shall not appear to be examined pursuant to such Notice shall be brought up before any Court to be examined without having given the like Notice at least six Months previous to the time at which he or she shall appear in order to be examined.

Prisoner not to be examined but at Quarter Session of which he shall have given Notice to his Creditors.

VII. Provided always, That nothing in this Act contained shall extend to repeal or alter any of the Powers or Provisions of the said recited Act, or of another Act passed in the fifty-fourth Year of His Majesty's Reign, intituled, "An Act to amend an Act of the fifty-third Year of His Majesty's Reign, for the Relief of Insolvent Debtors in *England*," further than any of the Powers or Provisions in the said Acts are hereby expressly repealed or altered respectively.

Not to repeal former Acts, except as herein excepted.

54 G. 3. c. 23.

Further Addenda.

CLASS I.—GENERAL COURTS OF COMMON LAW—JUDGES.

No. 35.

57 George III. c 11 — An Act to facilitate the Progress of Business in the Court of King's Bench in *Westminster Hall.*—[17th *March* 1817]

One of the Judges may sit apart for adding and justifying Special Bail [

No. 36.

57 George III. c. 18.—An Act to facilitate the hearing and determining of Suits in Equity in his Majesty's Court of Exchequer at *Westminster.*—[29th. *March* 1817.)

[I The Chief Baron of the Court empowered to hear and determine Suits in Equity]

[II To sit at such Times as the Lord Chief Baron shall appoint — All Decrees to have full Force and Validity, subject to Appeal to the House of Lords]

[III Baron may on Petition rehear Causes]

CLASS III.—ORIGINAL WRIT—PROCESS—ARREST — IMPRISONMENT — BAIL — APPEARANCE.

No. 44.

1 Edward III. stat. 1 c. 5 —An Averment may be made against false Returns of Bailiffs of Liberties.

Ex Rot in Turr. Lond.

No. 44. 1 Edward III. st. 1. c 5.

AUXINT est purveu et establi qe desore enavant countre faux return des baillifs des fraunchises qe unt plein retourn des brefs eit homme averement et reco-

'ITEM, It is provided and 'established, That from 'henceforth against the false 'Returns of Bailiffs of Fran-'chises, which have full Re-'turn of Writs, a Man shall

Ex Rot. in Turr Lond.

No. 44.
1 Edward III. st. 1. c. 5.

'have Averment; and recover as well against them as against the King's Sheriff, as well of too little Issues returned as in other Cases, so that it falleth not in Prejudice of the Lords, nor in the Blemish of their Franchise; and that the Estate of holy Church be always saved. And that all the Punishment fall only upon the Bailiffs, by Punishment of their Bodies, if they have not whereof to answer.'

verer auxicome devers le visc' le Roi auxibien de trop petit issues retournez come en autre cas issi qil ne chiete en prejudice des Seignours en emblemissement de lour fraunchises et qe lestat de seinte Eglise soit touz jours sauve. Et qe tot le punissement soulement chiete sur les baillifs par punissement de lour corps si neient de quoi respoundre.

No. 45.

57 George III. c. 101.—An Act to continue an Act, intituled, "An Act further to extend and render more effectual certain Provisions of an Act passed in the twelfth Year of the Reign of his late Majesty King *George* the First, intituled, 'An Act to prevent frivolous and vexatious Arrests,' and of an Act passed in the fifth Year of the Reign of his Majesty King *George* the Second, to explain, amend, and render more effectual the said former Act; and of two Acts, passed in the nineteenth and forty-third Years of the Reign of his present Majesty, extending the Provisions of the said former Acts."—[11th *July* 1817.]

[51 Geo. III. c 124. continued to 1st. November 1823, and to the End of the next Session.]

CLASS VI.—PLEADINGS AND OTHER PROCEEDINGS PREVIOUS TO TRIAL.

No. 23.

8 Henry VI. c. 12.—No Judgment or Record shall be reversed for any Writ, Process, &c. rased. What Defects in Records may be amended by the Judges, and what not.

No. 23.
8 Henry VI. c. 12.

'ITEM, our Lord the King hath ordained and established by the Authority of

ITEM nostre Seignur le Ro ad ordine et estable pa auctorite de cest present par

Ex Rot. in Turr. Lond.

lement qe pur errour assigne ou assigner en ascune recorde processe garaunt dattourn brief original ou judicial panell ou retourne en ascuns lieux dicelx rasez ou entrelinez ou en ascun addition subtraction ou diminution des paroles lettres titles ou parcelles des lettres troves en ascun tiel recorde processe garraunt dattourne brief panell ou retourne queux rasures entrelinez addition subtraction ou diminution al discretion des Juges le Roy des courtes et places en queux les ditz recordes ou processe par briefe derrour ou autrement sount certifiez appiergent suspectz ne soit ascune juggement ne recorde reverse ne adnulle.

No. 23. 8 Henry VI. c. 12.

No Judgement nor Record shall be reversed nor avoided for any Writ, Return, Process, &c. rased or interlined.

'this present Parliament, That 'for Error assigned, or to be 'assigned, in any Record, 'Process, or Warrant of Attor-'ney, Original Writ or Judi-'cial, Panel or Return, in any 'Places of the same rased or 'interlined, or in any Addi-'tion, Substraction, or Dimi-'nution of Words, Letters, 'Titles, or Parcels of Letters, 'found in any such Record, 'Process, Warrant of Attor-'ney, Writ, Panel, or Re-'turn, which Rasings, Inter-'linings, Addition, Substrac-'tion, or Diminution, at the 'Discretion of the King's 'Judges of the Courts and 'Places, in which the said 'Records or Process by Writ 'of Error, or otherwise, be 'certified, do appear suspect-'ed, no Judgement nor Re-'cord, shall be reversed nor 'adnulled.

Et que les Juges le Roi des Courtes et places en queux ascun recorde processe parole plee garaunt dattourne brief panell ou retourne pur le temps soit esent poair dexaminer tielx recordes processe paroles plees garrauntz dattourne brief panell et retourne par eux et lour clerks et de reformer et amender en affermance des juggementz de tielx recordes et processe tout ceo qe a eux en lour discretion semble estre mesprision de clerk en tielx recordes processe parole plee garraunt dattourne brief panell et retourne forsprise appelez enditementz de treson et des felonies et utlagaries dicelles et la substance de propres nouns urnouns et additions entrelessez en briefs originalx briefs dexigent solonqe lestatut autre foitz fait lan seconde

The Judges may reform all Defects in Records which be Misprision of the Clerk.

'II. And that the King's 'Judges of the Courts and 'Places in which any Record, 'Process, Word, Plea, Warrant 'of Attorney, Writ, Panel, or 'Return, which for the Time 'shall be, shall have Power to 'examine such Records, Pro-'cess, Words, Pleas, Warrants 'of Attorney, Writs, Panels, or 'Returns, by them and their 'Clerks, and to reform and 'amend (in Affirmance of the 'Judgements of such Records 'and Processes) all that which 'to them in their Discretion 'seemeth to be Misprision of the 'Clerks in such Record, Pro-'cesses, Word, Plea, Warrant 'of Attorney, Writ, Panel, and 'Return; except Appeals, 'Indictments of Treason and 'of Felonies, and the Out-'lawries of the same, and the 'Substance of the proper

What Defects in Records may not be amended.

Ex Rot. in Tu r Lond.

No 23. 8 Henry VI.

Names, Surnames, and Additions left out in Original Writ and Writs of Exigent, according to the Statute another Time made the first Year of King *Henry*, Father to our Lord the King that now is, and in other Writs containing Proclamation, so that by such Misprision of the Clerk no Judgement shall be reversed nor adnulled. And if any Record, Process, Writ, Warrant of Attorney, Return, or Panel be certified defective, otherwise than according to the Writing which thereof remaineth in the Treasury, Courts, or Places from whence they be certified, the Parties in Affirmance of the Judgements of such Record and Process shall have Advantage to alledge, that the same Writing is variant from the said Certificate, and that found and certified, the same Variance shall be by the said Judges reformed and amended according to the first Writing.

1. H. 5. c. 5.

Variance alledged between a Record and the Certificate thereof shall be by the Justice amended.

le Roi *Henr*, pier nostre Seignur le Roi qor est et en autres briefs contenantz proclamation issint qe par tiel mesprision de clerk ne soit ascun juggement reverse ne adnulle. Et si ascun recorde processe briefe garraunt dattourne retourne ou panel soit certifie defective autrement qe accordant al scripture qe ent demoert en les Tresorie Courtes ou lieux dount ils sount certifiez dient les parties en affermance des juggementz de tiels recorde et processe avauntage dalegger qe mesme la scripture est variaunt al dit certificate et ceo trove et certifie soit mesme la variance par les ditz Juges reformme et amende accordant a dit primer scripture.

Imbezzling of a Record, whereby any Judgement shall be reversed, is Felony.

'III. And moreover it is ordained, That if any Record, or Parcel of the same Writ, Return, Panel, Process, or Warrant of Attorney in the King's Courts of Chancery, Exchequer, the one Bench or the other, or in his Treasury, be wilingly stolen, taken away, withdrawn, or avoided by any Clerk, or by other Person, because whereof any Judgement shall be reversed, that such Stealer, Taker away, Withdrawer, or Avoider, their Procurators, Counsellors, and Abettors, thereof indicted, and by Process thereupon made thereof duly convict by their

Et outre ceo est ordine qe si ascun recorde ou parcell dicel briefe retourne panell processe ou garaunt dattourne en les Courtes le Roi de Chauncellarie Eschequer lun Bank ou lautre ou en sa tresorie soit voluntierment emble emporte retreit ou avoide par ascun clerk ou autre persone a cause de quell ascun juggement soit reverse qe tiel embleour emportour retreiour et avoidour lour procuratours counseillours et abbettours ent enditez et par proces e sur ceo faitent duement convictz par lour propre confession ou par enqueste appendre des loialx hommes dount la moite soit

Ex Rot n Iur. Lond

des le nun dascun Courte de mesme les Countes et lautre moyte dautres s t et ajugges pur felons et encourgent la peine de felonie Et qe les Juges de les ditz Courts de lun bank ou lautre eient pour hoier et terminer tiels defautes devant eux et dent faire punition come devaunt est dit.

'own Confession, or by Inquest to be taken of lawful 'Men, whereof the one half 'shall be of the Men of any 'Court of the same Counts, 'and the other half of other, 'shall be judged for Felons, and shall incur the Pain of Felony And that the Judges 'of the said Courts of the one Bench or of the other have Power to hear and determine 'such Defaults before them, 'and thereof to make due Punishment as afore is said

No 24. 8 Hen VI. c 1

Purveu toutz foitz qe si ascun tiel recorde processe brief garrant dattourne panell ou retourne ou parcell dicel ont a present ou en apres serra exemplifie en la Chauncellarie le Roi soubz son graunde seal et tiel exemplification des ditz recordes enrolle sainz ascun rasure en une ne meme lieu en mesme les exemplification et lenrollement dicell qe aiors pur null error assigne ou a assigner en le ditz recordes processe briefs garaunt dattourne panell ou retourne en a un lettre parole clause ou matier dicell variaunt ou contrariaunt a dite exemplification et lenrollement ne soit nulle juggement des ditz recordes et processe reverse ne adnulle

IV Provided alway That if any such Record, Process, Writ, or Warrant of Attorney, Panel, or Return, or Parcel of the same be now or hereafter shall be exemplified in the King's Chancery under the Great Seal and such Exemplification thereof Record inrolled without any Rasing in be same Place in the Exemplification and the Inrollment of the same that another Time for any Error assigned, or to be assigned in the said Record Process, Writ, Warrant of Attorney, Panel or Return, in any Letter, Word Clause, or Matter of the same varying, or contrary to the said Exemplification and the Inrollment, there shall be no Judgement of the said Records and Process reversed nor adnulled

A Record exemplified under the Great Seal, &c. not to be reversed

CLASS XV - WALES, COUNTIES PALATINE AND LIBERTIES

No 52

4 George III c 21 An Act for taking and swearing Affidavits to be made Use of in any of the Courts of the County Palatine of *Durham*

No. 55.

34 George III. c. 46. An Act for taking of Special Bail in Actions and Suits depending in the Court of Common Pleas at the County Palatine of *Lancaster*.—[9th *May* 1794.]

CLASS XVI. INFERIOR COURTS.

No. 24.

1 Henry V. stat. 1. c. 2.—A *Corpus cum Causa*, or *Certiorari*, to remove him who is in Execution at another Man's Suit.

No. 24. 1 Henry V. c. 2.

ITEM, Forasmuch as many Men have been condemned in the Courts of our Lord the King and in the Courts of his Progenitors, as well within the City of *London*, as in other Cities and Boroughs within the Realm of *England*, and by the virtue of such Condemnations have been committed to the Prison of our Lord the King, there to remain until they have made Agreement to the Plaintiffs to whom they were condemned, after by their Suggestions made in the Chancery of our Lord the King, they have had divers Writs called *Certiorari*, and *Corpus cum Causa*, out of the Chancery of our said Lord the King, directed to the Sheriffs or Keepers of the Prisons where such Persons condemned be holden, to have their Bodies with the Cause of Imprisonment of the condemned aforesaid, in the Chancery, at the Day contained in the said Writs, after which Writs, together with the Body and the Cause of the Condemnation, return-

Le Rot. in Turr. Lond.

ITEM pur ceo qe pleusours gentz ont estez condempnez en les courtz nostre dit Seignur le Roy & en les courtz de ses nobles progenitours sibien deinz la Citee de Loundres come en autres citees & burghs deinz le Roialme dEngleterre & par vertue de tielx condempnations ont estez commis a la prisone nostre Seignur le Roy pur y demorer tanque ils ont fait gree a lour pleintifs vers queux ils fueront condempnez & apres par lour suggestions faitz en la Chauncellarie nostre Seignur le Roy ont eeuz diverses briefs appellez certiorari corpus cum causa hors de la Chauncellarie nostre Seignur le Roy directz as viscountz ou gardeins dez prisones ou tielx gentz condempnez sont detenuz pur avoir lour corps ove la cause de lour emprisonement de les condempnez susditz en la Chauncellarie as jours contenuz en les ditz briefs apres queux briefs ensemblement ovesqe le corps & la cause de condempnacion retournez en la Chauncellarie susdite les ditz gentz issint condempnez ont estez deliverez en la

La Rot en Iure Lord. Chauncellerie avaundit par baille ou par mainprise ou a large sanz baille ou mainprise encontre lassent & volunte des ditz pleintif & sans ascun gree faire as ditz pleintifs de les sommes en queux ils sont condempnez encontre la ley de la terre & issint demurgent les ditz pleintifs sanz remedie en anientissement de lestat de tielx pleintifs & en defesaunce des juggementz renduz en les courtz avaunditz nostre dit Seigneur le Roy voillant ent faire remedie del advys & assent avauntditz & a la requeste des Communes susdites ad ordeigne & establie qe si ascun tiel brief de certiorari corpus cum causa soit graunte ou serra graunte en temps avenir & sur le dit brief soit retourne qe le prisoner q'st issint detenu en prisone soit condempne par juggement qe maintenant soit remande ou demurge continuelment en prisone solonc la ley de la terre sanz estre lessez aler par baille ou par mainprise encontre la volunte des pleintifs susditz tanqe lour soit fait gree de les sommes issintz adjugge

"ed in the Chancery afore-" said, the said Persons so con-" demned have been delivered "in the Chancery aforesaid by "Bail or by Mainprise, or en-" larged without Bail or Main-" prise, against the Assent and "Will of the said Plaintiffs, "and without any Agreement "made to the said Plaintiffs "of the Sums in the which "they be condemned, against "the Law of the Land, and "so remain the said Plaintiffs "without Remedy in hinder-" ance of the State of such "Plaintiffs, and in defeating "of the Judgements given in "the Courts aforesaid." 'Our 'Lord the King, willing here-'in to provide Remedy, by 'the Advice and Assent afore-'said, and at the Request of 'the foresaid Commons, hath 'ordained and established, That 'if any such Writ of *Certiorari* 'or *Corpus cum Causa*, be 'granted, or shall be granted 'at any Time hereafter, and 'upon the said Writ, if it be 'returned, that the Prisoner 'which is so holden in Prison 'is condemned by Judgement 'given against him, that pre-'sently he shall be remanded, 'where he shall remain conti-'nually in Prison according to 'the Law and Custom of the 'Land, without being let to go 'by Bail or by Mainprise 'against the Will of the said 'Plaintiffs, until Agreement 'be made to them of the Sums 'so adjudged.'

No. 24. 2 H. V. st. 1, c. 2

No. [illegible]

43 Elizabeth, c. 5. An Act to prevent Perjury and Subornation of Perjury, and unnecessary Expenses in Suits of Law.

No. [illegible]
43 Elizabeth, c. 5.

At what Time a Writ to remove a depending Suit in inferior Court shall be delivered to the Judge or Officer of the same Court.

'WHEREAS within divers Cities and Towns Corporate and other Places within the Realm of *England*, 'and the Dominions thereof, there are Jurisdictions, Customs, 'and Privileges to hold Plea in Actions of Debt, and other 'Actions, Plaints and Suits between Party and Party, and 'divers of Her Majesty's Subjects do daily commence many 'Actions, Plaints and Suits in the said Cities, Towns Corporate and Places, according to their Jurisdictions, Customs and 'Privileges of the said Places, and many Defendants in 'Actions, Plaints and Suits there brought and commenced, 'will suffer the said Actions, Plaints and Suits to be proceeded 'in and prosecuted there, until the Cause between the Plaintiffs and them be at Issue, and the Jury sworn, and Evidence 'given on the Plaintiff's Part, before the said Defendant will 'deliver into the Court where the said Actions, Plaints or Suits 'are to be tried Writs formerly sued forth by them, to remove 'the Cause there depending, into some one or other of Her 'Majesty's Courts of Record at *Westminster*; which keeping 'back of the said Writ is done by the Defendant to no other 'Purpose or Intent, but to put the Parties Plaintiffs to as great 'Charges and Expences as they the said Defendants can, and 'to know what Proof the Parties Plaintiffs can make for the 'proving of their Issue, whereby the Defendants that sued 'forth the said Writs, may have longer time to furnish them'selves with some false Witnesses, to impugn the Proofs 'which the Plaintiffs have openly made by their Witnesses 'and Proofs, which is a great Cause of Perjury and subornation of Perjury, and great Expences to the Plaintiffs.'

II. For Remedy whereof, be it enacted by the Queen's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That from and after the End of this present Session of Parliament, no Writ or Writs of *Habeas Corpus*, or any other Writ or Writs sued forth, or to be sued forth, by any Person or Persons whatsoever, out of any of her Majesty's Courts of Record at *Westminster*, to remove any Action, Suit, Plaint or Cause, depending or to be depending, in any Court or Courts within any City or Town Corporate, or elsewhere, which have or shall have Jurisdiction, Power, or Authority to hold Plea in any Action, Plaint or Suit, shall be received or allowed by the Judge or Judges, or Officer or Officers of the Court or Courts wherein or to whom any such Writ or Writs shall be delivered (but that he and they shall and may proceed in the said Cause and Causes ready to be tried, as though no such Writ or Writs were sued forth or delivered to him or them) except that the said Writ or

Writs be delivered to the Judge or Judges, Officer or Officers of the said Court, before that the Jury which is to try the Cause in Question between the Party or Parties Plaintiff, and the Party or Parties that sued forth the said Writ or Writs, or for whose Benefit the said Writ or Writs is or shall be sued forth, have appeared, and one of the said Jury sworn to try the said Cause

No. 25.

III. Provided always, That this Act shall continue no longer than until the End of the next Parliament ... Car. I. c. ... continued until the End of the first Session of the next Parliament, and farther continued by 16 Car. I. c. 4.

No. 26.

7 Anne, c. 10. An Act for rendering more effectual the Laws concerning Commissions of Sewers

[Preamble ... the Laws in Force concerning Commissioners of Sewers. After 25 Mar., 1709, Commissioners of Sewers may ... Copyhold Land ... Decrees to be executed ...]

[II. The Lords of such Copyhold Lands to agree ... of whom holden, for the accustomed Fines, and the Lords to admit ... Tenants.]

[III. Six of the Commissioners may by Warrant ... to levy the Assessments by Distress and Sale ... to the Owners.]

CLASS XIX. – DISTRESS, REPLEVIN, AND MATTERS RELATING TO LANDLORD AND TENANT.

No. 24.

57 George III. c. 52. An Act to alter an Act passed in the eleventh Year of the Reign of King George the Second, for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants [27th. June 1817.]

[11 Geo. II. c. 19. ... recited.]

'AND whereas it is expedient, for the due Protection of the Interest of Landlords, that so much of the said ... Act as requires a Tenant to be in Arrear for one Year's Rent should be altered, and that the Provisions of the said Act should be extended to Tenancies where no Right of Entry in case of Non-payment is reserved to the Landlord;' Be it therefore enacted, &c. That from and after the passing of this Act, the Provisions, Powers, and Remedies by the said recited ...

No. 24. 57 Geo. III. c. 52. Certain ... recited

No. 24.
57 Geo. III.
c. 52.

Act extended to the Case of Tenants in Arrear for one Half Year's Rent instead of one Year.

Act given to Lessors and Landlords in case of any Tenant deserting the demised Premises and leaving the same uncultivated or unoccupied, so as no sufficient Distress can be had to countervail the Arrears of Rent, shall be extended to the Case of Tenants holding any Land, Tenements or Hereditaments at a Rack Rent, or where the Rent reserved shall be full Three Fourths of the Yearly Value of the demised Premises, and who shall be in Arrear for one Half Year's Rent (instead of One Year as in the said recited Act is provided and enacted) and who shall hold such Lands and Tenements or Hereditaments under any Demise or Agreement either written or verbal, and although no Right or Power of Re-entry be reserved or given to the Landlord in case of Non-payment of Rent, who shall be in Arrear for one Half Year's Rent, instead of for one Year, as in the said recited Act is provided and enacted.

No. 25.

57 George III. c. 93. — An Act to regulate the Costs of Distresses levied for Payment of Small Rents. [10th July 1817.]

No. 25.
57 Geo. III.

'WHEREAS divers Persons acting as Brokers and Distrainers on the Goods and Chattels of others, or employed in the Course of such Distresses, have of late made excessive Charges, to the great Oppression of poor Tenants and Farmers, and it is expedient to check such Practices;' be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act no Person whatever making any Distress for Rent, where the Sum demanded and due shall not exceed the Sum of Twenty Pounds for and in respect of such Rent, nor any Person whatever employed in any Manner in making such Distress, or doing any Act whatever in the Course of such Distress, or for carrying the same into Effect, shall have taken or receive out of the Produce of the Goods or Chattels distrained upon and sold, or from the Tenant distrained on, or from the Landlord, or from any other Person whatsoever, any other or more Costs and Charges for and in respect of such Distress, or any Matter or Thing done therein, than such as are fixed and set forth in the Schedule hereunto annexed, and appropriated to each Act which shall have been done in the Course of such Distress; and no Person or Persons whatsoever shall make any Charge whatever for any Act, Matter, or Thing mentioned in the said Schedule, unless such Act shall have been really done.

No Person making any Distress for Rent, where the Sum demanded does not exceed 20l. to take other Charges than mentioned in the Schedule annexed.

Nor to charge for any Act not done.

II. And be it further enacted, That if any Person or Persons whatsoever shall in any Manner levy, take, or receive

Parties aggrieved by any such

from any Person or Persons whatsoever, or retain or take from the Produce of any Goods sold for the Payment of such Rent, any other or greater Costs and Charges than are mentioned and set down in the said Schedule, or make any Charge whatsoever for any Act, Matter, or Thing mentioned in the said Schedule, and not really done, it shall be lawful for the Party or Parties aggrieved by such Practices to apply to any one Justice of the Peace for the County, City, Town, and acting for the Division where such Distress shall have been made, or in any Manner proceeded on, for the Redress of his, her, or their Grievance so occasioned; whereupon such Justice shall summon the Person or Persons complained of to appear before him at a reasonable Time to be fixed in such Summons, and such Justice shall examine into the Matter of such Complaint by all legal Ways and Means, and also hear in like Manner the Defence of the Person or Persons complained of; and if it shall appear to such Justice that the Person or Persons complained of shall have levied, taken, received, or had other and greater Costs and Charges than are mentioned or fixed in the Schedule hereunto annexed, or made any Charge for any Matter or Thing mentioned in the said Schedule, such Act, Matter or Thing not having been really done, such Justice shall order and adjudge Treble the Amount of the Monies so unlawfully taken, to be paid by the Person or Persons so having acted to the Party or Parties who shall thus have preferred his, her, or their Complaint thereof, together with full Costs; and in case of Non-payment of any Monies or Costs so ordered and adjudged to be paid, such Justice shall forthwith issue his Warrant to levy the same by Distress and Sale of the Goods and Chattels of the Party or Parties ordered to pay such Monies or Costs, rendering the Overplus (if any) to the Owner or Owners, after the Payment of the Charges of such Distress and Sale; and in case no sufficient Distress can be had, such Justice shall by Warrant under his Hand commit the Party or Parties to the Common Gaol or Prison within the Limits of the Jurisdiction of such Justice, there to remain until such Order or Judgment be satisfied.

No person ... Costs ... — Parties may apply to a Justice of the Peace.

Justice may adjudge Treble the Amount of the Monies unlawfully taken, with Costs, which may be levied by Distress.

III. And be it enacted by the Authority aforesaid, That it shall be lawful for such Justice, at the Request of the Party complaining or complained against, to summon all Persons as Witnesses, and to administer an Oath to them, touching the Matter of such Complaint or Defence against it; and if any Person or Persons so summoned shall not obey such Summons, without any reasonable or lawful Excuse, or refuse to be examined upon Oath, or if a Quaker upon solemn Affirmation, then every such Person so offending shall forfeit and pay a Sum not exceeding forty Shillings, to be ordered, levied, and paid in such Manner and by such Means, and with such Power of Commitment, as is herein-before directed as to such Order and Judgment to be given between the Party or Parties in the

Justice may summon Witnesses.

Penalty.

original Complaint, excepting so far as regards the Form of the Order, and hereinafter provided for.

IV And be it further enacted, That it shall be lawful for such Justice, if he shall find that the Complaint of the Party or Parties aggrieved is not well founded, to order and adjudge Costs not exceeding twenty Shillings to be paid to the Party or Parties complained against, which Order shall be carried into Effect, and levied and paid in such Manner, and with like Power of Commitment, as is herein before directed as to the Order and Judgment founded on such original Complaint Provided always that nothing herein contained shall empower such Justice to make any Order or Judgment against the Landlord for whose Benefit any such Distress shall have been made, unless such Landlord shall have personally levied such Distress Provided always, that no Person or Persons who shall be aggrieved by any Distress for Rent, or by any Proceedings had in the Course thereof, or by any Costs and Charges levied upon them in respect of the same, shall be barred from any [illegible] or other Suit or Remedy which he, she, or they might have had before the passing of this Act, excepting so far as any Complaint to be preferred by virtue of this Act shall have been determined by the Order and Judgment of the Justice before whom it shall have been heard and determined, and which Order and Judgment shall and may be given in Evidence under the [illegible] of the General Issue, in all Cases where the Matter of such Complaint shall be made the Subject of any Action

V And be it further enacted, That such Orders and Judgments on such Complaints shall be made in the Form in the Schedule hereunto annexed, and may be proved before any Court by Proof of the Signature of the Justice to such Order and Judgment and such Orders as regard Persons who may have been summoned as Witnesses shall be made in such Form as to such Justice shall seem most fit and convenient

VI And be it further enacted, That every Broker or other Person who shall make and levy any Distress whatsoever shall give a Copy of his Charges and of all the Costs and Charges of any Distress whatsoever, signed by him, to the Person or Persons on whose Goods and Chattels any Distress shall be levied, although the Amount of the Rent demanded shall exceed the Sum of twenty Pounds,

VII And be it further enacted, That a fair printed Copy of this Act shall be hung up in some convenient Place in each Hall or Room where the Justices of each and every County in England and Wales shall hold either their Quarter or other Session

SCHEDULE referred to in this Act.

No. 25.
57 George III.
c. 93.

FORM of the Order and Judgment of the Justice before whom Complaint is preferred, where the Order and Judgment is for the Complainant.

In the Matter of the Complaint of *A. B.* against *C. D.* for a Breach of the Provisions of an Act of the fifty-seventh Year of his Majesty King *George* the Third, intituled *An Act* [*here insert the Title of this Act*] I, *E. F.* a Justice of the Peace for the County of and acting within the Division of do order and adjudge that the said *C. D.* shall pay to *A. B.* the Sum of as a Compensation and Satisfaction for unlawful Charges and Costs levied and taken from the said *A. B.* under a Distress for Rent; and the further Sum of for Costs on this Complaint.

(Signed) *E. F.*

FORM of the Order and Judgment of the Justice, where he dismisses the Complaint as unfounded, and with or without Costs, as the Case may be.

In the Matter of the Complaint of *A. B.* against *C. D.* for the Breach of the Provisions of an Act of the fifty-seventh Year of his Majesty King *George* the Third, intituled *An Act* [*here insert the Title of this Act*] I, *E. F.* a Justice of the Peace for the County of and acting within the Division of do order and adjudge that the Complaint of the said *A. B.* is unfounded [*if Costs are given*] and I do further order and adjudge, that the said *A. B.* shall pay unto the said *C. D.* the Sum of for Costs.

(Signed) *E. F.*

SCHEDULE of the Limitation of Costs and Charges on Distresses for Small Rents.

	£	s.	d.
Levying Distress - - -	0	3	0
Man in Possession, per Day - - -	0	2	6
Appraisement, whether by one Broker or more, sixpence in the Pound on the Value of the Goods			
Stamp the lawful Amount thereof - -			
All Expenses of Advertisements, if any such	0	10	0
Catalogues, Sale and Commission, and Delivery of Goods, one Shilling in the Pound on the Net Produce of the Sale.			

CLASS XXIII.—KING'S DEBTS.

No. 26.

9 Henry III. (Magna Charta) c. 8.—How Sureties shall be charged to the King.

No. 26.
9 Henry III.
c. 8.

'WE or our Bailiffs shall not seize any Land or Rent for any Debt, as long as the present Goods and Chattels of the Debtor do suffice to pay the Debt, and the Debtor himself be ready to satisfy therefore. Neither shall the pledges of the Debtor be distrained, so long as the principal Debtor is sufficient for the payment of the Debt. And if the principal Debtor fail in payment of the Debt, having nothing wherewith to pay, or will not, as where he is able, the pledges shall answer for the Debt. And if they will, they shall have the Lands and Rents of the Debtor, until they be satisfied of that which they before paid for him, except that the Debtor can shew himself to be acquitted against the said Sureties.'

Ex Pat. in Turr. Lond.

NOS vero vel Ballivi nostri non seisiemus terram aliquam vel redditum pro debito aliquo quamdiu catalla debitoris presentia sufficiunt ad debitum reddend' et ipse debitor paratus sit inde satisfacere. Nec plegii ipsius debitoris distringantur quamdiu ipse capitalis debitor sufficit ad solutionem ipsius debiti; et si capitalis debitor defecerit in solutione debiti, non habens unde reddat aut reddere nolit cum possit, plegii de debito respondeant; et si voluerint, habeant terras et redditus debitoris quousque sit eis satisfactum de debito quod ante pro eo solverint, nisi capitalis debitor monstraverit se esse inde quietum versus eosdem plegios.

No. 27.

57 George III. c. 117.—An Act to regulate the issuing of Extents in Aid.—[11th. July 1817.]

No. 27.
57 George III.
c. 117.

'WHEREAS Extents in Aid have in many Cases been issued for the levying and recovering of larger Sums of Money than were due to his Majesty by the Debtors on whose Behalf such Extents were issued; and it is expedient to prevent such Practice in future; and in other Cases Extents in Aid have been issued at the Instance and for the Benefit of Persons indebted to his Majesty by simple Contract only:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That upon the issuing of every Extent in Aid, on Behalf of any Debtor to

Amount of Debt due to the

his Majesty, after the passing of this Act, his Majesty's Court of Exchequer at *Westminster*, or the [illegible] his Majesty's Exchequer, or Lord Chief Baron or other Baron of the said Court, granting the Fiat for the issuing of such Extent in Aid, shall cause the Amount of the Debt or Sum of Money due or claimed to be due to his Majesty to be stated and specified in the said Fiat, and that in all Cases in which the Debt or Debts found due to the Debtor to his Majesty shall be equal to or exceed the Debt stated and specified in the said Fiat as aforesaid, the Amount of the Debt so stated and specified in the said Fiat shall be indorsed upon the Writ, and the Writ so indorsed shall be deemed to be and be the Authority and Direction to the Sheriff or other Officer who shall execute such Writ, in making his Levy and executing the same, as to the Amount to be levied and taken under the said Writ, and that in all Cases in which the Debt or Debts found due to the Debtor to his Majesty shall be of less Amount than the Debt stated and specified in the said Fiat as aforesaid, the Amount of such Debt or Debts found due to such Debtor to his Majesty shall be indorsed upon the Writ, and the Writ so indorsed shall be deemed to be and be the Authority and Direction to the Sheriff or other Officer who shall execute the said Writ, in making his Levy and executing the same, as to the Amount to be levied and taken under the said Writ; and that the Money levied, taken, recovered, or received under or by virtue of every such Extent in Aid so prosecuted and issued, shall be, by Order of the said Court, paid over to and for his Majesty's Use, towards Satisfaction of the Debt so due to his Majesty as aforesaid.

II. Provided always, and be it further enacted, That in every Case in which the Sum produced by the Sale of any Lands, Goods, or Chattels taken, or by the Receipt of any Sum of Money by any Sheriff or other Officer under any such Writ of Extent, for the Purpose of levying the Amount or Sum of Money indorsed upon the Back of the Writ, shall be more than sufficient to satisfy the Amount of the Sum indorsed upon the Writ, such Overplus shall be paid into the Court of Exchequer, together with the said Amount indorsed upon the said Writ, and the said Court shall, upon any summary Application or Applications, make such Order for the Return, Disposal, or Distribution of any such Surplus, or any Part or Proportion thereof, as to the said Court shall appear to be proper.

III. Provided always, and be it further enacted, That nothing in this Act contained, and no Seizure of any Debt into the Hands of his Majesty, or Part Recovery or Payment of such Debt, or other Proceeding had under or in pursuance of this Act, or in relation to the applying for, obtaining, or executing any such Writ, or disposing of any such Overplus, shall affect or in any Manner prejudice, either at Law or in Equity, any Right, Claim, or Demand of the Person or Persons to whom such Debt shall have been due or owing, when

[Marginal notes: [illegible] Court of Exchequer [illegible] | If any Overplus, the Court [illegible] dispose of it upon summary Application | [illegible] the Debtor to the Crown [illegible] Remainder of any Debt]

No. 27. 57 Geo. III c. 117.

seized into his Majesty's Hands, or his or their Assignee or Assignees, or Executor or Executors, or Administrator or Administrators, as to the remaining Part of such Debt, or as to the suing any Person or Persons against whom any such Writ shall have issued, or whose Lands or Goods shall have been seized or taken under any such Writ, for the Residue or remaining Part of such Debt, or as to the Recovery of or receiving any Residue or remaining Part of any Debt so seized or in Part levied, recovered or paid, or any further or other Debt seized or sued for under or by virtue of any such Extent, but then remaining due and unpaid, either in the Whole or in Part; but that it shall be lawful for any Person or Persons as aforesaid, his or their Assignee or Assignees, Executor or Executors, or Administrator or Administrators, to demand, sue for, and recover the Remainder of any such Debt so seized, or any other Debt or Debts, by the like Process and in the same Manner as if no such Extent in Aid had issued, any Thing contained in any Act or Acts of Parliament, or Law or Laws, to the contrary notwithstanding.

Extents in Aid not to be sued out by Simple Contract Debtors to the Crown, &c. except in certain cases.

IV. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any Person or Persons, Companies or Societies of Persons, Corporate or not Corporate, who shall or may be indebted to his Majesty by simple Contract only, nor for any such Person or Persons, Companies or Societies, who shall or may be indebted to his Majesty by Bond for answering, accounting for, and paying any particular Duty or Duties, or Sum or Sums of Money, which shall arise or become due and payable to his Majesty from such Person or Persons, Companies or Societies respectively, for and in respect and in the Course of his or their particular Trade, Manufactories, Professions, Businesses, or Callings, nor for any Subdistributor of Stamps who shall have given Bond to his Majesty, nor for any Person who shall have given Bond to his Majesty, either jointly or separately, as a Surety only for some other Debtor to his Majesty, until such Surety shall have made Proof of a Demand having been made upon him on behalf of his Majesty, in consequence of the Non-performance of the Conditions of the Bond by the Principal, and then only to the Amount of the said Demand, to sue out and prosecute any Extent or Extents in Aid, by reason or on account of any such Debt or Debts to his Majesty respectively, for the Recovery of any Debt or Debts due to such Person or Persons, Companies or Societies, or to such Subdistributor of Stamps or Surety as aforesaid; and that all and every Commission and Commissions to find Debts, Extent and Extents in Aid, and other Proceedings which shall be so issued or instituted at the Instance of or for such Simple Contract or Bond Debtor or Debtors respectively, and all Proceedings thereupon, shall be null and void: Provided always, that nothing herein contained shall extend or be construed to extend to preclude or prevent any Persons who shall or may become Debtor or Debtors to his Majesty by Simple Contract

only, by the Collection or Receipt of any Money arising from his Majesty's Revenue for his Majesty's Use, from applying for and suing out any Commission or Commissions, Extent or Extents in Aid, in case one or more of such Persons shall be bound to his Majesty by Bond or Specialty of Record in the said Court of Exchequer, for answering, securing, paying over, or accounting for to his Majesty, the particular Duties or Sums of Money which shall constitute the Debt that may be so then due from such Person or Persons to his Majesty; any Thing herein-before contained to the contrary notwithstanding.

No. 27: 57 George III. c. 117.

Extent in Aid not to issue on Bonds for the Payment of Duties against any Corporate Body, &c.

V. Provided nevertheless, and be it further enacted, That no Extent in Aid shall be issued on any Bond given by any Person or Persons as a Surety or Sureties for the paying or accounting for any Duties which may become due to his Majesty from any Body or Society, whether incorporated or otherwise, carrying on the Business of Insurance against any Risques either of Fire or of any other Kind whatever.

Persons imprisoned under any Writ of Capias in Extents in Aid, may apply to the Courts of Exchequer for their Discharge.

VI. And be it further enacted, That it shall and may be lawful for any Person or Persons who may now or shall hereafter be imprisoned under or by virtue of any Writ of Capias in any Extent or Extents in Aid, to apply to the Barons of his Majesty's Court of Exchequer in *England* or *Scotland*, or to any Baron of the same Court in Vacation, for his, her, or their Discharge, giving one Month's previous Notice in Writing to the Person or Persons to whom he, she, or they owed the Debt or Sum or Sums of Money for which he, she, or they is or are so imprisoned, at the Time such Debt was seized under such Extent in Aid, of his, her, or their Intention to make such Application, and stating in such Notice the Ground of such Application, and an Enumeration and Description of all and every the Property, Debts, and Effects whatsoever of such Person or Persons in his, her, or their own Possession or Power, or in the Possession or Power of any other Person or Persons for his, her, or their Use; and for the said Court, or any such Baron in Vacation to whom such Application shall be made, to order such Person or Persons to be brought before them or him to be examined upon Oath touching and concerning his, her, or their Property and Effects; and if such Person or Persons respectively shall upon such Examination make a full Disclosure of all his, her, or their Property and Effects, to the Satisfaction of the said Court or Baron, or it shall otherwise appear reasonable and proper to such Court or Baron that such Person or Persons should be no longer imprisoned under such Writ, for such Court or Baron to order a Writ of *Supersedeas quoad Corpus* to be issued out of the said Court for the Liberation of such Person or Persons from such Imprisonment: Provided always, that no such Liberation as aforesaid shall be held or deemed to satisfy or supersede such Extent in Aid or any Proceedings thereon, except as to such Imprisonment as aforesaid, or the Debt or Debts seized under and by virtue thereof, and for which such Person or Persons shall be so imprisoned.

CLASS XXV.—COURTS OF EQUITY.

No. 31.

5 George III. c. 28.—An Act to impower the High Court of *Chancery* to lay out, upon Government Securities, a Sum of Money therein mentioned, out of the Common and General Cash in the Bank of *England* belonging to the Suitors of the said Court, and to apply the Interest arising therefrom, towards augmenting the Income of the Masters of the said Court.

No. 32.

49 George III. c. 6.—An Act for the Relief of Prisoners in Custody for Non-payment of Money pursuant to Orders of Courts of Equity.—[13th. *March* 1809.]

No. 32. 49 George III. c. 6.

32 G. 2. c. 28.

33 G. 3. c. 5.

37 G. 3. c. 85.

'WHEREAS it is just and highly expedient that the 'Benefit of an Act, passed in the thirty-second Year 'of the Reign of his late Majesty King *George* the Second, 'intituled, "An Act for Relief of Debtors with respect to 'the Imprisonment of their Persons, and to oblige Debtors, 'who shall continue in Execution in Prison beyond a certain 'Time, and for Sums not exceeding what are mentioned in 'the Act, to make Discovery of, and deliver upon Oath, 'their Estates for their Creditors Benefit;" and of an Act, 'passed in the thirty-third Year of the Reign of his present 'Majesty, intituled, "An Act for the further Relief of Debtors 'with respect to the Imprisonment of their Persons, and to 'oblige Debtors, who shall continue in Execution in Prison 'beyond a certain Time, and for Sums not exceeding what 'are mentioned in the Act, to make Discovery of, and deliver 'upon Oath, their Estates for their Creditors Benefit;" and of 'an Act, passed in the thirty-seventh Year of the Reign of 'his present Majesty, intituled, "An Act to amend so much of 'an Act, made in the thirty-second Year of the Reign of King '*George* the Second, intituled, 'An Act for the Relief of 'Debtors with respect to the Imprisonment of their Persons, 'and to oblige Debtors, who shall continue in Execution in 'Prison beyond a certain Time, and for Sums not exceeding 'what are mentioned in the Act, to make Discovery of, and 'deliver upon Oath, their Estates for their Creditors Benefit,' 'as relates to the Weekly Sums thereby directed to be paid to 'Prisoners in Execution for Debt, in the Cases therein mentioned;" should be extended to Prisoners in Custody for 'Contempt of Court, by not paying Money ordered to be paid

'by Decrees or Orders of Courts of Equity; Be it therefore 'enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, all Persons who are or shall be in Custody for Contempt of any Court of Equity, by not paying any Sum or Sums of Money or Costs, ordered to be paid by any Decree or Order of any such Court, shall be entitled to the Benefit of the said several Acts of Parliament, and shall be subject to all the same Terms and Conditions as are therein expressed and declared with respect to Prisoners for Debt only; and that it shall be lawful for Persons now in Custody for such Contempt to make Application for Relief under the said Acts of Parliament, at any Time before the End of *Michaelmas* Term next.

No. 32.
49 George III. c. 6.
Persons in Custody for Contempt of Courts of Equity for Non-payment of Money or Costs, shall be entitled to the Benefit of the recited Acts.

No. 33.

57 George III. c. 39.—An Act to extend certain Provisions of the Acts of the thirty-sixth and fifty-second Years of the Reign of his present Majesty to Matters of Charity and Friendly Societies.—[20th. *June* 1817.]

[36 G. 3. c. 90. 52 G. 3. c. 158. recited.]

BE it therefore enacted, That from and after the passing of this Act the said Acts of Parliament, and all the Relief and Remedies, Provisions, Protections, and Indemnities thereby provided, shall extend and be deemed and taken to extend, and the same are hereby declared and enacted to extend, to all Cases of Petitions on which the Court of Chancery, or the Lord High Chancellor or Commissioners of the Great Seal for the Time being, or the Master of the Rolls, or the Vice Chancellor of *England* for the Time being, or the Court of Exchequer, are by Law authorized and empowered to grant Relief and make summary Orders without Suit, either in Matters of Charity, or relative to or for the better Security, or for the Application, Receipt, Payment, or Transfer of any of the Funds thereof; or in Matters relative to any Benefit or Friendly Societies, or for the better Security, or for the Application, Receipt, Payment, or Transfer of any of the Funds thereof.

No. 33.
57 George III. c. 39
Extending certain Provisions of recited Acts to Charity and Friendly Societies.

A

COLLECTION

OF

STATUTES

CONNECTED WITH THE

GENERAL ADMINISTRATION OF THE LAW;

ARRANGED

ACCORDING TO

THE ORDER OF SUBJECTS,

WITH

NOTES.

BY WILLIAM DAVID EVANS, ESQ.

VICE-CHANCELLOR OF THE COUNTY PALATINE OF LANCASTER.

VOL. IV. DIVISION 2.

CONTAINING

PART IV. CLASS XXVI.

Bankrupts.

LONDON:

PRINTED FOR J. BUTTERWORTH AND SON, FLEET-STREET; AND J. COOKE, ORMOND QUAY, DUBLIN.

☞ *This Class, to be either bound separately, or with the other Classes of Vol. IV. as most convenient.*

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BANKRUPT LAWS.

No. I.

XXXIV and XXXV. Hen. VIII. c. 4. A.D. 1542.—An Act against such Persons as do make Bankrupt.

WHEREAS divers and sundry Persons craftily obtaining into their Hands great Substance of other Mens Goods, do suddenly flee to Parts unknown, or keep their Houses, not minding to pay or restore to any of their Creditors, their Debts and Duties, but at their own Wills and Pleasures consume the Substance obtained by Credit of other Men, for their own Pleasure and delicate Living, against all Reason, Equity and good Conscience: Be it therefore enacted by Authority of this present Parliament, that the Lord Chancellor of England, or Keeper of the Great Seal, the Lord Treasurer, the Lord President, Lord Privy Seal, and other of the King's most Honourable Privy Council, the Chief Justices of either Bench for the Time being, or three of them at the least, whereof the Lord Chancellor or Keeper of the Great Seal, Lord Treasurer, Lord President, Lord Privy Seal, to be one, upon every Complaint made to them in Writing by any Parties grieved concerning the Premisses, shall have Power and Authority by Virtue of this Act, to take by their Wisdoms and Discretions such Orders and Directions as well with the Bodies of such Offenders aforesaid, wheresoever they may be had, or otherwise, as also with their Lands, Tenements, Fees, Annuities and Offices, which they have in Fee-Simple, Fee-Tail, Term of Life, Term of Years, or in the Right of their Wives, as much as the Interest, Right and Title of the same Offender shall extend or be, and may then lawfully be departed with, by the said Offender, and also with their Money, Goods, Chattels, Wares, Merchandises, and Debts, wheresoever they may be found or known. And to cause their said Lands, Tenements, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandises and Debts, to be searched, viewed, rented and appraised, and to make Sale of the same Lands, Tenements, Fees, Annuities, and Offices, as much as the same Offender may then lawfully give, grant, or depart with, or otherwise to order the same for true Satisfaction and Payment of the said Creditors: That is to say, to every of the said Creditors a portion, rate, and rate-like according to the Quantity of their Debts. And the ...

No. 1. 34 & 35 Hen. VIII. c. 4.

Direction, Order, Bargain, Sale, and other Things done by the said Lords authorised, as is aforesaid, in Writing, signed with their Hands, by authority of this Act, shall be good and effectual in the Law to all Intents, Constructions and Purposes against the said Offenders, their Heirs and Executors for ever, as though the same Order, Direction, Bargain and Sale had been made by the said Offender or Offenders, at his or their own free Will and Liberty, by Writing indented enrolled in any the King's Courts of Record.

And be it also further enacted by the Authority aforesaid, that if after any such Act or Offence committed, and Complaint thereof made to the said Lords as is aforesaid, any Party grieved concerning the Premisses, knowing, supposing, or suspecting any of the Goods, Chattels, Wares, Merchandises or Debts of such Offender or Offenders, to be in Custody, Use, Occupying, Keeping, or Possession of any Person or Persons, or any Person or Persons to be indebted to any such Offender or Offenders, do make Relation thereof to the said Lords, to whom Authority is given by this present Act, as is aforesaid: that then the said Lords shall by Virtue hereof have full Power and Authority to send for and convent afore them by such Process, Ways, or Means, as they shall think convenient by their Discretions, all and every such Person and Persons so known, supposed or suspected, to have any such Goods, Chattels, Wares, Merchandises, or Debts in his or their Custody, Use, Occupation, Keeping or Possession, or supposed or suspected, to be indebted to such Offender or Offenders: and upon their Appearance to examine them and every of them as well by their Oaths, as otherwise by such Ways and Means, as the said Lords by their Discretions, shall think meet and convenient for and upon the Speciality, Certainty, true Declaration and Knowledge, of all and singular such Goods, Chattels, Wares, Merchandises, and Debts, of any such Offenders as be supposed or suspected to be in his or their Custody, Use, Occupation or Possession, and of all such Debts as by them or any of them, shall be supposed or suspected to be owing to any such Offender: and if any such Person or Persons upon such Examinations do not disclose, plainly declare and shew the whole Truth of such Things as he or they shall be examined of, concerning the Premisses: then every such Person or Persons so examined, and not declaring the plain and whole Truth, concerning the Premisses upon due Proof thereof to be made, before the said Lords therefore authorised, as is aforesaid, by Witness, Examination, or otherwise, as to the same Lords shall seem sufficient in that Behalf, shall lose and forfeit double the Value of all such Goods, Chattels, Wares, Merchandises, and Debts by them or any of them so concealed and not wholly and plainly declared and shewed, which Forfeiture shall be levyed and recovered by the said Lords having

Process.

Examination.

Concealment.

Forfeit.

Authority as is aforesaid, by such Ways and Means as to them shall seem requisite and convenient. And the same Forfeiture to be distributed and employed to and for the Satisfaction and Payment of the Debts of the said Creditor or Creditors, in such like Manner, Rate and Form as is above declared, concerning the Ordering of the Goods and Chattels of the said Offenders, keeping their Houses, or flying to Places unknown, as is aforesaid.

And be it also further enacted by the Authority aforesaid, that if after any such Person or Persons shall keep his or their Houses, or flee to Parts unknown, as is aforesaid, any Person or Persons do fraudulently by Covin or Collusion, claim or demand any Debt, Duty, or other Thing by Writing or otherwise, of any such Offender or Offenders, other than such as he or they can and do prove to be due by Right and Conscience in Form aforesaid, before the said Lords having Authority by this present Act, as is aforesaid, and the same to proceed *bona fide*, without Fraud or Covin: that then every such Person and Persons, so craftily demanding or claiming any such Debt, Duty or other Thing, as is aforesaid, shall forfeit and lose double as much as he or they shall so claim or demand. And the same Forfeiture to be levyed, recovered and imployed in Manner and Form as is afore rehearsed.

Claim.

And be it also further enacted by the Authority aforesaid, that if any such Person or Persons, which shall keep his or their Houses, or flee to Parts unknown, as is aforesaid, or intent to delay or defraud their Creditors deceitfully by Covin or Collusion, suffer or cause any other Person or Persons, to recover against him or them any Debts, Goods, Chattels, Wares, or Merchandises, without just Cause and Title so to do, proceeding *bona fide*, without Fraud or Covin, that then upon Complaint thereof made to the said Lords having Authority by this present Act, as is aforesaid, the same Lords shall have Power, Authority, by Virtue hereof to convent and call before them the said Recoverer or Recoverers, and after such Fraud, Deceit, Covin or Collusion, shall plainly appear, or be duly proved before the said Lords authorised, as is aforesaid, all the said Goods and Chattels of the said Offender so recovered, shall be chargeable, imployed, ordered, and delivered toward the Payment of the true and due Debts of the said Creditor, after the Manner, Form and Rate, as is afore specified, by the Discretion of the said Lords, having Authority by this present Act, the aforesaid false and fained Recoveries notwithstanding, so that always such false and fained Recoveries shall not be in Force, or any Execution thereby had of or upon any Goods, Chattels, Lands, or Tenements of any such Offender or Offenders, until such Time as all his or their true and due Debts and Duties shall be fully satisfied, contented, and payed to his or their Creditors. And nevertheless after that

Collusion.

the said true Debts and Duties shall be fully satisfied and paid, as is aforesaid, as well the Body of the said Offender, as his Lands, Tenements, Goods and Chattels, shall be charged and liable to the Execution of the said Recovery, according to the Tenor, Force, and Effect of the same.

Execution.

And be it also enacted by the same Authority, that if any such Person or Persons which shall be indebted, do withdraw himself out of this Realm, and other the King's Dominions, into any Foreign Realm or Country, to the intent thereby to abide and remain, in Defraud of his Creditors: that then upon Complaint in Writing concerning the Premisses thereof made to the said Lords having Authority, as is aforesaid, the same Lords shall by Virtue and Authority of this present Act, have full Power and Authority to award Proclamations to be made in such Places as to them shall be thought meet and convenient, commanding by the same such Offender in the King our Sovereign Lord's Name, to return with all convenient Speed into this Realm, and to yield his Body before the said Lords, having Authority as is aforesaid, or one of them. And if the said Person within three Months next after he shall have Knowledge of such Proclamation, or as soon after as he conveniently may, do not repair and yield his Body as is aforesaid, that then the Body of all and every such Offender and Offenders shall be judged, taken and deemed to all Intents and Purposes out of the King's Protection, and that also all Goods, Chattels, Lands, Tenements and Debts of every such Offender, shall be by the Order and Discretion of the said Lords, imployed and distributed amongst his Creditors, equally and indifferently Rate for Rate, in like Manner and Form as is afore declared. And that also every Person or Persons that shall willingly help to aid, imbesil or convey any such Person or Persons, their said Goods, Chattels, Wares or Merchandises out of this Realm, and other the King's Dominions, into any Foreign Realm or Place, knowing the said Person or Persons to depart or withdraw themselves, or convey their said Goods, Chattles, Wares and Merchandises for the Cause and Intent aforesaid, shall suffer such Pains by Imprisonment of their Bodies, or pay such Fine to our Sovereign Lord the King, his Heirs or Successors, as to the said Lords having Authority by Virtue of this present Act, shall seem meet and convenient for their said Offence or Offences.

Complaint. Proclamation. Aiders.

Provided always, and be it enacted by the Authority aforesaid, that if the Creditors of any such Offender or Offenders, which shall keep his or their House or Houses, or which shall absent or withdraw themselves into Places unknown, for the Cause aforesaid, be not fully satisfied and payed or otherwise contented for their Debts and Duties, by the Ways and Means afore specified and declared, that then the said Creditor and Creditors, and every of them shall and may have their Remedy

Creditors.

for the Recovery and levying of the Residue of the same Debts or Duties, whereof they shall not be fully satisfied and paid, or otherwise contented in Form aforesaid, against the said Offender or Offenders, in like Manner and Form as they should or might have had before the making of this Act. And that the said Creditor and Creditors, and every of them, shall be only barred and excluded by Virtue of this Act, of and for all and every such Part and Portion of the said Debts and Duties, as shall be payed, satisfied, distributed, or delivered unto him or them by the said Lords having Authority as is aforesaid, and of no more Portion or Parcel thereof, any Thing herein specified that may be taken or construed to the Contrary notwithstanding.



XIII. Eliz. c. 7, 1570.—An Act touching Orders for Bankrupts.

Who is a Bankrupt, how and by whom the B[illegible] [illegible] Creditors.

FORASMUCH as notwithstanding the Statute made against Bankrupts in the thirty-fourth Year of the Reign of our late Sovereign Lord King Henry the Eighth, those Kind of Persons have and do still increase into great and excessive Numbers, and are like more to do, if some better Provision be not made for the Repression of them, and for a plain Declaration to be made and set forth, who is and ought to be taken and deemed for a Bankrupt: Therefore be it enacted and established by the Authority of this present Parliament, That if any Merchant or other Person using or exercising the Trade of Merchandize by way of Bargaining, Exchange, Rechange, Bartry, Chevisance, or otherwise, in Gross or by Retail, or seeking his or her Trade of Living by Buying and Selling, (1) and being Subject born of this Realm, (2) or of any the Queen's Dominions, or Denizen, sithence the first Day of this present Parliament hath, or at any Time hereafter shall depart the Realm: or begin to keep his or her House or Houses, or otherwise to absent him or herself; or take Sanctuary; or suffer him or herself willingly to be arrested for any Debt or other Thing, not grown or due for Money delivered, Ware sold, or any other just or lawful Cause, or good Consideration or Purposes, hath or will suffer him or herself to be outlawed, or yield him or herself to Prison, or depart from his or her Dwelling-house or Houses, to the Intent or Purpose to defraud or hinder any of his or her Creditors, being also a Subject born as is aforesaid, of the just Debt or Duty of such Creditor or Creditors, shall be reputed, deemed and taken for a Bankrupt, (3).

(1.) For the general Description of Persons liable to be Bankrupts, Sec. 21, Jac. 1 c. 15 s. 2 post c. Notes.

(2.) Extended to Aliens, 21 J. 1 c. 15 sec. 15.

(3.) As to these Acts of Bankruptcy.—See the next Number.

The Lord Chancellor may grant a Commission to order the Bankrupts Bodies, Lands and Goods.

II. And be it enacted by the Authority aforesaid, That the Lord Chancellor of *England*, or Lord Keeper of the Great Seal of *England*, for the Time being, upon every Complaint made to him in Writing, against any such Person or Persons being Bankrupt as is before defined, shall have full Power and Authority by Commission under the Great Seal of *England*, to name, assign and appoint such wise and honest discreet Persons as to him shall seem good: Who or the most Part of them, by Virtue of this Act and of such Commission, shall have full Power and Authority to take by their Discretions *such Order and Direction* with the Body and Bodies of such Person wheresoever he or she may be had, either in his or her House or Houses, Sanctuary or elsewhere, as well by Imprisonment of his or her Body or Bodies; *as also with all his* or her Lands, Tenements, Hereditaments, as *well Copy or Customary Hold as Freehold*, which he or she shall have in his or her own Right before he or she became Bankrupt; (4) and also with all such

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RELATION TO ACT OF BANKRUPTCY.

(4) By Force of this Provision, the Commission attaches upon all the Property of the Bankrupt, from the Time of the Act of Bankruptcy, and all Transactions, however fair, which have afterwards taken place, are wholly void, except so far as the general Provision has been modified by the Exceptions contained in subsequent Statutes.

These Exceptions relate to the Case of a Payment by a Debtor to the Bankrupt, 1 Jac. 1 c 15 s. 14; to the Protection of Purchasers, unless the Commission issues within five Years, by 21 Jac 1 c. 19 s 11; to Payments protected in particular Cases, by 19 Geo. 2 c. 32 s. 1; to Dealings and Transactions with the Bankrupt more than two Calendar Months before the Date of the Commission, by 46 Geo. 3 c. 135; to Executions levied more than two Months before the Date of the Commission, by 49 Geo. 3 c. 121; to certain Cases respecting the Delivery of Goods, by 56 Geo. 3 c. 157; and will be particularly considered in their proper Course.

In all these Cases, subject to a Question with Respect to the Provision, by 21 Jac. 1, the Acts in Question are only protected in Case there is no Notice of the Bankruptcy, or in some of the Cases of the Party being insolvent or having stopped Payment.

The Effect of the general Provisions by which fair and honest Transactions are liable to be overturned; by which a Person buying Goods and paying for them at the Time, a Creditor in the Course of Business receiving the Payment of his Debt, a Sheriff executing the Process of the Law, are liable to be treated as wrong Doers, in consequence, perhaps, of some secret Act which has taken place long before, has always been with Justice regarded as one of the greatest Hardships of the Law.

In the Construction and Exposition of the Law, Considerations of Hardship must of course not be allowed to operate against the Intention and Provisions of the Law itself; but if ever the Bankrupt Law should be subjected to general Revision, those Considerations will be entitled to very great Attention, especially when it is recollected that all Cases of actual Fraud or undue Preference can be otherwise sufficiently obviated so far as they can be made apparent.

If the Hardship resulting from the present System were merely casual and accidental, and necessary to give Effect to Provisions, in their general Nature just and beneficial, and the Cases so inseparably

connected, that a great and manifest Preponderance of Benefit could only be obtained at the Price of the particular Inconvenience, the Decision should certainly be in Favour of its Retention, but where the general Operation of the Law is in its Nature and Tendency productive of admitted Hardship, the Propriety of adopting a different Decision is equally apparent, and to this Question of Hardship may be fairly applied the following Observations respecting the general Amendment of Law "It is a good Rule and Direction, (for that all Laws, *secundum magis et minus*, do participate of Contrarieties) that followeth:—Mark whether the Doubts that arise are only in Cases of extraordinary Experience, or which happen every Day; if in the first only, impute it to the Frailty of their Foresight, that cannot reach by Law to all Cases, but if in the latter, be assured that there is a Fault in the Law." Bacon's Proposal for the Amendment of the Law—[The Expression in the Copy before me is only in Cases of *ordinary* Experience, or which happen *not* every Day; but the Sense evidently requires a different Reading]—and this Rule applied to the Bankrupt Law would I apprehend lead at least to the further Correction of the present System.

I cannot help thinking that the vague and indefinite Expressions used in the Statute of Eliz. were intended to import a notorious and manifest breaking up of a Trading Concern, which would necessarily challenge general Observation, and make it very proper to prevent the Effect of individual Exertion or undue Preference, and that the Commission would in the Expectation of the Framers of the Act almost immediately follow the Stoppage which was the Occasion of it.

The Hardship of the Relation in Question has often been felt and acknowledged in the actual Administration of the Law. In Clarke v. Ryall 1 Bl. Rep. 612, upon a Motion for the Sheriff to pay over Money to the Assignees which had been levied on an Execution before the Act of Bankruptcy had been completed by lying two Months in Prison, the Court said, "This is a Case *strictissimi juris* and the Relation of which the Assignees would take Advantage, an odious one, therefore we will not assist it upon motion. And in the very recent Case of Coles v. Wright, 4 Taunt. 198 Mansfield C J. in deciding that an Action could not be maintained against a Person by whom the Auctioneer employed by a Person in Prison to sell Goods, sent him the Proceeds—said "The Doctrine relative to the Act of Bankruptcy is in all Cases extremely hard, and is not to be carried further than we are compelled to carry it." There are several Cases in which Courts of Equity have refused to assist Assignees, founding themselves upon this Relation, against Persons standing in the Situation of Purchasers for a valuable Consideration without Notice. See particularly Obbery v. Williams, 1 Vern. 27, Wilkes v. Bodington, 2 Vern. 599, Anon Skin 119, Cobbett v. De Golls, Forrest 65, and the Doctrine seems to be clearly admitted in Billon v. Hyde, 1 Ves. 326. These Decisions are unfortunately overturned by later Cases. In Latouche v. Lord Dunsary, 1 S and L 152, Lord Redesdale said, that it is now the constant Course for Assignees to compel a Redemption of a Mortgage, on Payment only of what was advanced before the Bankruptcy.—This Doctrine was quite incidental to the Matter immediately in Discussion. In ex-parte Stott, the Right of a third Mortgagee, having taken the first Mortgage, subject to an outstanding Term to tack against the Assignees of the Mortgagor, was discussed but not decided; but in that Case, by Reason of the outstanding Term, the Mortgagee had not the legal Estate. In ex-parte Hubert 13 Ves. 183, Lord Erskine decided in Bankruptcy, that a Mortgagee could not tack as against Assignees on a Mortgage, subsequent to an Act of Bankruptcy without Notice, and previous to the Commission, and although he had the legal Estate, declaring his Opi

have purchased, or obtained for Money or other Recompence,

nion, that Cobbett v. De Golls was not Law, and observing that Lord Eldon and Lord Redesdale had expressed their Opinions against that Case, in the Cases referred to,—but it is observable, that Lord Erskine, in deciding this Case, speaks of the Provisions made by different Statutes against the ruinous Effect of the Relation of the Bankrupt Laws.

The beneficial Effect of the several Acts mitigating the Severity of the Bankrupt Laws is very generally felt and acknowledged, and it is not unworthy of Consideration, whether it may not be wise to extend Relief in many Cases, with Respect to Matters taking place after known Acts of Bankruptcy—as if the Creditors do not avail themselves of the appointed Remedy by suing out a Commission, it is often extremely inconvenient that all other Rights and Transactions should be subjected to Hazard and Uncertainty; and I am much inclined to think, that it would be very desirable in every Case to limit the issuing of the Commission to a certain Time after the Act of Bankruptcy. It is very evident, that an extremely injurious Use may, by the Management of the Bankrupt, be made of the existing State of the Law. - See Let Rom. see 27.

There are several Cases, respecting the Validity of Dispositions, where the Property in Substance passed before the Act of Bankruptcy, but some of the formal Acts for completing the Disposition did not take place until afterwards—as where a Bargain and Sale executed before the Act of Bankruptcy is not enrolled till afterwards, where Goods at Sea are assigned with an Undertaking to indorse the Bill of Lading on Arrival, where a Bill of Exchange is delivered over by the Payee who omits to indorse it. These Cases are mentioned in some of the Treatises, as qualifying the Doctrine of Relation; but they are not properly referable to that Subject, as the same Consequences would attach where the Acts done for completing the Transaction take place subsequently to the Commission.

The general Effect of the Relation, in point of Law, being sufficiently clear, I shall only refer to the few following Cases, respecting its particular Application, in Cases not affected by the qualifying Statutes.

In Willis v. Freeman, 12 c. 656, it was ruled, that no Action could be maintained against the Acceptor of a Bill of Exchange, drawn by the Bankrupt, payable to his own Order and indorsed by him, after a secret Act of Bankruptcy. By the Authority of Wilkins v. Casey, 7 T. R. 711, the Acceptor would have been protected in discharging the Bill by Statute 1 Jac. c. 15 s. 14. Very strong Reasons are adduced by Mr. Christian, vol. 2 p. 144, against the Propriety of this Decision, and it certainly does seem to go beyond the necessary Operation of the Doctrine of Relation. Nothing is more obvious, than that a Person taking a Bill of Exchange, in the Course of Business, looks principally to the Credit of the Acceptor, and is not led, by the Course of Business, to inquire into the Nature or Inducement for giving the Acceptance. The Bill being in Part accepted for Accommodation, the Acceptance was held to be so far obligatory, but so far as the Bankrupt had Effects to answer it in the Hands of the Acceptor, (which Effects were, by Operation of Law, the Property of the Assignees), it was ruled that there was a legal Defence; but I should conceive that the Credit given to the Bill of a Bankrupt so circumstanced should at least, generally and independently of any Operation of the Statute of James, be held equivalent to giving Credit to the Bill of any other Person who had no legal Claim upon the Acceptor.

Considered with Relation to the Statute of James, the Observations of Mr. Christian as to the Effect of the Case, that "the Acceptor may voluntarily pay the Bills, which Payment will be a Defence against the Assignees, but that he may resist the Action of the Holder, *by setting*

jointly with his Wife, Children or Child, to the only Use of

up the Right of the Assignees," is very important. The Abuses which may result from such an Option in the Acceptor are very manifest

In Ramsbottom v. Lewis, 1 Camp. 179, Lord Ellenborough held, that no Action could be maintained upon a Bill, drawn in Favour of a Firm, and indorsed by one Partner, after another had committed an Act of Bankruptcy; which operated in Point of Law as a Dissolution of the Partnership

In Fox and Hanbury, Cowp 445, it was ruled, that Trover could not be maintained by the Assignees of a Partner against the Defendant, to whom the solvent Partner, after an Act of Bankruptcy by the first had disposed of the Property. But the Ground of the Decision was, that the Defendant, as Disponee of the solvent Partner, was Tenant in common of the Property with the Assignees, and as such not subject to an Action of Trover. The Case does not prove that the Dispositions were valid as to the Bankrupt's Moiety of the Property; and in Smith v. Goddard, 3 B and P. the Court of C. B. thought that an Action might be maintained for a Moiety of the Money paid by a Clerk of the Firm, after an Act of Bankruptcy committed by the one Partner, and before such Act committed by the other, provided the Declaration had been properly framed, but the Declaration being for Money received for the Use of the two, and for Money received for the Use of the Plaintiffs, as Assignees of the two, was ruled to be insufficient. Smith v. Goddard, 3 B. and P. 465.

In Atkins v. Barwick, 1 Str. 165, the Defendants had sent Goods to the Bankrupt, who, after committing an Act of Bankruptcy, placed them in the Hands of, (Penhulton), a third Person, for the Use of the Defendants; after committing an Act of Bankruptcy, he wrote to the Defendants, intimating, that he thought it not reasonable that those Goods should go to the Rest of the Creditors, and had therefore left them with P to deliver to the Defendants, who, as soon as possible, consented to take the Goods again. It was held, that as the Delivery to P. was in Consideration of the Debt owing to the Defendants, that the Property passed to them subject to a Disagreement, that the Contract did not stand open till Agreement, but was complete unless there were an actual Disagreement.

In the subsequent Case of Aldum v. Temple, 4 Bur. 2235, a Bill sent, in Contemplation of Bankruptcy, before the Act of Bankruptcy committed, but not received till afterwards, was held not to have passed, the Act being fraudulent and not complete. Lord Mansfield said, with reference to the Case of Atkins v. Barwick, "There is no doubt but the Honesty of the Case inclined the Court to the Judgment they gave; the Reason given turns on a Subtilty. I think the Determination was right, and there was an actual Delivery to a Person who became a Trustee. But a Postboy is not a Trustee." The Doctrine of fraudulent Preference, as a substantial Ground for invalidating a Transaction, had not been established at the Time of these Decisions, and it seems very questionable whether the Decision of Atkins v. Barwick, (notwithstanding it is mentioned with Approbation in Salte v. Field, 5, T. R 211—Barnes v. Freeland, 6 T. R. 80), could be reconciled with that Doctrine, as it is now settled, and as such will be referred to in the Sequel of the present Note.

The Relation to the Act of Bankruptcy cannot be sustained, unless the Petitioning Creditor's Debt was subsisting at the Time of the Act. Ex-parte Birkett, 2 Rose, 71.

PREFERENCE.

This seems to be the proper Place to advert to the Doctrine of fraudulent Preference, in Contemplation of Bankruptcy, whereby Transactions are defeated, although complete before the Act of Bankruptcy committed, and as a Consequence of this Doctrine, it has been

such Offender or Offenders; or of or for such Use, Interest,

established, that if a Conveyance or Assignment be made by Deed under such Circumstances, as in other Cases, would be held to amount to a fraudulent Preference, the Deed shall in itself be held to constitute an Act of Bankruptcy. The Cases respecting Deeds having that Effect will be referred to in the Note upon that Part of Stat. 1 Jac. I c. 15 s. 2, which relates to fraudulent Conveyances.

There were many Cases in which Transactions, previous to and in Contemplation of Bankruptcy, for the Purpose of giving an undue Preference, were held invalid, upon their particular Circumstances, and in which some Incompleteness of the Transaction, at the Time of the Act of Bankruptcy committed, was resorted to as the immediate Ground of the Decision, and in Harman v. Fisher, arising on the Bankruptcy of Fordyce, Cowper, 117, A. D. 1774; Lord Mansfield expressly stated, that all Questions of Preference turn upon the Act being complete, before an Act of Bankruptcy is committed. But three Years afterwards, in the Case of Rust v. Cooper, Cowp. 629, his Lordship and the other Judges of the King's Bench decided, that a Delivery of the Goods by the Debtor, of his own Accord, to a Creditor, in Contemplation of Bankruptcy, and in order to give a Preference, was in itself fraudulent and void; and this Authority has been followed and acted upon ever since, however little Foundation it may appear to have in the Statutes respecting Bankruptcy, and notwithstanding Doubts of its original Propriety, and a Disposition to avoid extending the Doctrine beyond existing Precedents, has been not unfrequently expressed, in the Decision of subsequent Cases, especially by Lord Thurlow, in Yeates v. Groves, 1 Ves jun. 280; Lord Loughborough, ex-parte Scudamore, 3 Ves. 85; and by Lord Ellenborough, who, in Crosby v. Crouch, 2 Camp. N. P. 166, said, "Strictly only the Acts of a Trader, subsequent to his Bankruptcy, are void. Precedent Acts, supposed to be in Contemplation of Bankruptcy, have likewise been invalidated: but this is an Excrescence upon the Bankrupt Laws.—The Cases upon the Subject have gone far enough, and I am not disposed to give them any Extension"

In Barnes v. Freeland, 6 T. R. 80, the Doctrine was ruled to apply to the Case where a Person, who had purchased Goods and given a Bill for the Amount, finding, that in Consequence of the Failure of his Banker, he must also stop Payment, voluntarily proposed to the Seller that he should take back the Goods, stating that it would be an Act of Justice to return them, as he should not be able to pay for the same or to take up the Bill.

It is settled by several Cases, that the Objection of fraudulent Preference does not apply where the Act done is occasioned by the Threat, or even the mistaken Apprehension of legal Proceedings, Thompson v. Freeman, 1 T. R. 155; or upon the Pressure and Application of the Creditor, Cosser v. Gough, 1 T. R. 156; Yeates v. Groves, 1 Ves. 280, ex-parte Scudamore, 3 Ves. 85; so where Goods in such Cases are given instead of Money, Smith v. Payne, 6 T. R. 152, Hartshorn v. Slodden, 2 B. and P. 582. In the last Case, the Defendant was not in Trade, and the Articles were more than he could want in his Family. The same Doctrine was applied where a Person, who had discounted Bills for the Bankrupt, prevailed upon him to deposit Goods as a Security before they were due. Lord Ellenborough, after making the Observation already cited of the Doctrine of Preference being an Excrescence upon the Bankrupt Laws, said, "If the Debt had been due, the Preference certainly would not have been fraudulent. It wants Voluntariness, in which the Fraud consists. The Consideration upon which a Payment made to an importunate Creditor of a Debt actually due has been allowed to be valid, has not been that he might resort to a Suit to

Right or Title as such Offender or Offenders then shall have in the same, which he or she may lawfully depart withal (5) or

enforce Payment, but that his Demand repels the Presumption that the Bankrupt, upon the Eve of Bankruptcy, made a Distinction among his Creditors, and spontaneously favoured one of them, to the Prejudice of the Rest. A Demand of further Security for a Debt not yet due has the same Effect, and in neither Case is there any Fraud upon the Bankrupt Laws, on which Ground alone Transactions previous to the Bankruptcy can be set aside, Crosby v. Crouch, 2 Camp. N. P. 166; See the Cases of Singleton v. Butler, 2 B. and P. 283, Thornton v. Hargreaves, 7 E. 544, in which the Doctrine of Preference seems to be carried further than in the Cases above referred to, and in some Degree allowed to prevail, notwithstanding the previous Importunity of the Creditor; but the first of these Cases seems to turn upon an Inference of actual Fraud, from the Debtor previously informing the Creditor that his Affairs were bad, and would not pay 10s. in the Pound, the second ended in granting a new Trial, on account of some Suspicion respecting the Facts, and the Cases can hardly be set up, as impugning the Principle, that a fraudulent Preference must arise from the spontaneous Act of the Bankrupt.

In Whitwell v. Thompson, 1 Esp. cas. 68, Lord Kenyon held, that the Deposit of Leases, for the immediate Advance of Money, was not fraudulent, he observed, that all the Cases where an Assignment had been deemed fraudulent, had been where it had been given for a by gone and before contracted Debt.

Where the Bankrupt, intending to give the Defendant a Preference, sent his Clerk with Deeds, but before they were delivered, the Defendant, not knowing of their being sent, called and demanded Payment, such Payment was ruled by Lord Ellenborough, not to amount to a fraudulent Preference, Bayley v. Ballard, 1 Camp. N. P. 416.

A Payment made in Contemplation of an Assignment, which did not take Effect, was held not to amount to a fraudulent Preference, in Respect of a Bankruptcy which took place four Months afterwards, Wheelwright v. Jackson, 5 Taunt. 109.

See also Fidgeon v. Sharpe, 5 Taunt. 539, in which upon the Circumstances of this Case the Jury found that the Transaction in Question did not take place in Contemplation either of Bankruptcy or Insolvency, and their Verdict was sustained by the Court. Gibbs, C. J. in the Course of his Judgment said, "it was argued that if a man is in such a State that he knows he cannot, without the Indulgence of his Creditors, resume his Payments immediately, he cannot make a Payment to a Creditor, because he must necessarily contemplate that Bankruptcy will be the Consequence. I cannot go along with the Counsel in this Conclusion. By the common Law he may pay any one; the general Effect of the Statute on the Subject of Bankrupts is, that all Payments before Bankruptcy are legal and valid. but a certain Class of Cases has arisen in which certain Payments have been supposed to be made in Fraud of the Bankrupt Laws, and are, therefore, fraudulent and void. But I find in all the Cases from Fordyce's to the present, the Fact found that the Act was done in Fraud of the Bankrupt Laws; it must be an Act then that not only in Effect contravenes the Bankrupt Laws, but it must be done with intent to contravene them, and in Contemplation of Bankruptcy. The Innocence or Guilt of this Act then depends on the Mind of him who did it; and it cannot be in Fraud of the Bankrupt Laws unless the Actor intended it should be so." The Court expressly declined giving any Opinion how far the mere Contemplation of Insolvency, independently of Bankruptcy, was sufficient to vitiate the Transaction in Case of Bankruptcy actually taking place. See also S. C. 1 Marsh. 196.

with any Person or Persons of Trust to any secret Use of such

OF THE PROPERTY WHICH PASSES TO THE ASSIGNEES.

(5.) The general Principle respecting the Rights and Property which devolve upon the Assignees is, that they succeed to such Rights subject to such Equities and Liabilities as belong to or affect the Bankrupt himself.

There are many Subjects concerning which Questions affecting the Right of Property most commonly arise in Cases of Bankruptcy, but but which do not in any Respect depend upon the Application of the Bankrupt Law, but may equally arise in Questions between the Bankrupt himself, his general Representatives, the Sheriff levying an Execution, or others claiming under him and third Persons, as between such third Persons and the Assignees, in Case of Bankruptcy, (except so far the Law is varied by Stat. 21 Jac. 1, c. 19, s. 11, with Respect to Property of which the Bankrupt is the reputed Owner, the Cases depending upon which will be adverted to in their proper Place); of this Description are all the Cases respecting the Doctrine of Lien and Stoppage in Transitu; such Rights where they can be asserted against the Bankrupt, supposing no Commission to have taken place, can equally be asserted against the Assignees, and are not at all referable to any Construction of the Statutes of Bankruptcy; so with Respect to all Questions relating to specific Property in the Hands of Executors, Trustees, Factors, Bankers and others; so Questions respecting Property belonging to Partnerships, in which the Assignees of a Bankrupt Partner succeed to his Rights, subject to the same Conditions and Qualifications with Respect to the Interest of the other Partners, as applied to the Partner himself.

These Subjects are very properly considered in Detail in the several Treatises upon the Bankrupt Law, but will not be examined with any Particularity in the Sequel of the present Note

It has been recently held, that Property obtained by the Fraud of the Bankrupt could not be claimed by the Assignees against the proper Owner. Sill borrowed Bank Notes and Bills of Exchange of Hadwen, (the Defendant) proposing to give ample Security, and as such Security delivered to H. an Order for some Coffee, in which he had no Interest, and which belonged to another Person; after committing an Act of Bankruptcy, he returned the Bills to the Defendant, and upon Trover by the Assignees, it was ruled, that they were not entitled to recover the Notes and Bills, having been obtained by a criminal Fraud. Lord Ellenborough said, "It has been argued, that the Property vested in the Assignees under the Commission, and that by Analogy to Cases in the criminal Law, the Property may be considered as having passed from the Defendant to Sill, but if it did, it was under such Circumstances that a Court of Equity would have directed the Property to be restored. It would be useless for a Court of Law to permit that to be recovered which could not be retained;" and having quoted the Case of Scott v. Surman, Willes, 402, in which it was held by Lord Ch. J. Willes, that nothing vests in the Assignees even at Law but such real and personal Estate of the Bankrupt in which he had the equitable as well as the legal Interest, his Lordship added, that on the Principles of that Case, and on the Authority of other Cases cited, the Court were of Opinion, that the Assignees were not entitled to recover the Property," Gladstone v. Hadwen, 1 M. and S. 517. It seems clear, that although from the Circumstances of the Case, the Decision was only that the Property could not be recovered from the Defendant, to whom it had been delivered after the Act of Bankruptcy, the Ground of such Decision relates to the absolute Right of the Property itself, and that the same Doctrine would equally have applied if the Bills had actually passed from the Hands of the Bankrupt to those of the Assignees.

Offender or Offenders d also with his or her Money, Goods,

In the subsequent Case of Taylor v. Sir Thomas Plomer, 3 M. and S. 562, it was ruled, that Property produced by the Misapplication of the identical Bank Notes which the Bankrupt had received to invest in Stock on Behalf of the Defendant might be specifically followed, and did not pass to the Assignees The Case contains a very full and distinct Examination of all the Authorities applicable to the Subject.

In general, Money or Bank Notes, in the Hands of a Bankrupt cannot be followed, as distinguished from his general Assets, but the Contrary is agreed to be the Case, when it can be distinctly identified as properly specifically separated and set apart, as in the preceding Cases of Hadwen v. Gladstone, and Taylor v Plumer; and see to the same Effect, Howard v. Jennett, 3 Bur. 1369, Rex v. Egginton, 1 T R. 369.

It is a general Rule, that Property may be claimed by the rightful Owner against any other Person to whom it has bona-fide come; and this is the common Foundation of the Claim of Assignees against third Persons, but Bank Notes and Bills of Exchange, on account of their Currency, belong to the Person by whom they are bona-fide received; and in Lowndes v. Anderson, 13 E. 130, it was ruled, that the Assignees could not recover the Amount of Bank Notes sent to the Defendant by the Bankrupt after the Bankruptcy, to take up a particular Bill, the Defendant not knowing that such Bank Notes were sent by the Bankrupt, who had previously endeavoured to take up the same Bill with Paper which had been refused; the Case was decided on the general Rule, that Bank Notes could not be followed through the Hands of bona-fide Holders, for a valuable Consideration, and which Rule is equally applicable to Bills of Exchange.—See Miller v. Race, 1 Bur 452, Grant v. Vaughan, 3 Bur. 1516, 1 Bl. Rep. 485, Peacock v. Rhodes, Doug. 632.

In the remaining Part of the present Note I shall follow the Arrangement of Mr. Cullen, as to the Operation of the Bankrupt Laws, upon the Subjects intended to be particularly adverted to, making such Additions at the End as may appear expedient.

I. RIGHTS OF ACTION.

I. *Rights of Action.*—Debts to a Bankrupt clearly pass to the Assignees. In Moyses v. Little, 2 Vern. 194, it was held, that the Assignees could not have the Benefit of a Covenant by the Father of the Bankrupt to pay him an Annuity; a preceding Case of Drake v. the Marquis of Exeter, 1 Ch. Ca. 71, was relied upon, in which, according to the Report, it was held, that the Assignees of a Bankrupt Lessee were not entitled to the benefit of a Covenant for the Renewal of a Lease; but that Statement is contradicted by the Report of the same Case, Freeman, 185, and is contrary to the present general Understanding on the Subject Mr. Christian contends, vol. 1. 250, &c. that the Decision was agreeable to the true consideration of the then existing Bankrupt Laws, 13 Eliz c. 7, 1 Jac. c. 15, but that the Statute 5 Geo. 2, which requires the Bankrupt to discover all the Estate whereby he may have or expect any *Possibility* of *Profit*, includes such Property. It does not appear to me, that those Words, which are in a Part of the Statute, of which the only Object was to compel a more perfect Discovery by the Bankrupt, could be fairly construed as giving to the Assignees a more extended Right of Property than they would otherwise have had; but the general Right of the Assignees to enforce a beneficial Contract with the Bankrupt certainly does not conclude the Question of a Right to enforce an Agreement for a Lease, where the personal Covenants of the Lessee may form a material Part of the Consideration

In Brooke v. Hewitt, 3 Ves. 253, Lord Loughborough refused to decide upon Demurrer the general Question, whether Assignees could compel the specific Performance of an Agreement for a Lease, thinking

Chattels, Wares, Merchandizes and Debts, wheresoever they

it was a Question which might depend upon a minute Variety of Circumstances; which would seem to shew, that generally speaking, he thought that the Assignees would be entitled to the Benefit of such an Agreement.

The Solicitor General mentioned a Case, in which Lord Thurlow had held, that such Interest passed under the Assignment.

In Weatherall v. Geering, 12 Ves. 504, an Agreement was made for a Lease to the Person who afterwards took the Benefit of an Insolvent Act, (which was treated as equivalent to a Bankruptcy), and in which Lease was to be contained a Covenant not to assign. The Bankrupt agreed to assign the Benefit of this Interest to the Plaintiff, who filed a Bill against the Assignees, to carry such Agreement into Effect. The Bill was dismissed by the Master of the Rolls, upon the general Merits of the Case. He observed, that it was very disputable whether the Assignee could himself enforce a specific Performance. "The Proposition, that the Assignee of a Bankrupt can compel a Landlord specifically to perform an Agreement to grant a Lease, had never been determined. The utmost Extent of Brooke and Hewitt was, that Lord Rosslyn, (Loughborough), would not say it was impossible, acknowledging that the Assignee would have great difficulty to establish it at the Hearing; he, (the Master of the Rolls), should think that Difficulty insurmountable. He then adverted to the Proviso against Assignment, and asked, if the Court, in Opposition to that Proviso, would execute the Agreement. In Flood v. Finlay, 2 Ball. and B 9, Lord Manners said, it was not necessary for him to decide the abstract Question, whether the Assignees of a Bankrupt cannot in any Case be entitled to a Decree for the specific Performance of an Agaeement for a Lease entered into by the Bankrupt, as he was satisfied that it would be contrary to the Intention of the Parties and to the Justice of the Case to give that Relief in the particular Case, it being perfectly clear to his Mind, that the Agreement was merely a personal Accommodation.

In Smith v. Coffin, 2 H. Bl. 444, it was ruled, that the Assignees could enforce a Right of Action to recover real Property under the Bargain and Sale, Eyre, C. J. said "The Right was an Hereditament." And Buller expressed his Doubt of the Authority of the Case in Vernon, and said, he held that every Species of Right of which by any Possibility Profit could be made, passed to the Assignees. This Opinion was the Occasion of Mr Christian's Observations as to the Difference between the early Statutes and the Statute 5 Geo. 2d. already noticed.

The Right of a Person under Statute 9 Anne, chap. 14, to recover Money lost at Play, passes to his Assignees, Brandon v. Pate, 2 H. B. 308.

In Barnes v. Flower, Cro. Car. 166, 176, it was ruled, against the Opinion of Hyde, C. J. that the Assignees were not entitled to Money for which Judgment had been given, in an Action of Slander before the Bankruptcy; but it seems clear that such a Case would now be differently determined, and that the Money would be considered as a positive pecuniary Debt.

Mr. Christian says, if the Trader recovered a Verdict for Damages, and become Bankrupt, if he did not enter up the Judgment himself, the Assignees could derive no Benefit from it. In such Case, I think there can be no Doubt but that the Court would permit the Assignees, even without the Assent of the Bankrupt, to enter up Judgment in his Name.

That no Action will lie by Assignees, for a more personal Tort to the Bankrupt, such as Assault or Defamation, is very manifest; and it is settled, that though Assignees may maintain Trover, they cannot maintain Trespass, for taking Goods, on Account of the Relation to the Act of Bankruptcy.

may be found or known; and cause the said Lands, Tenements,

But I apprehend, that the Case of such a Tort to the Property of the Bankrupt as had the Effect of deteriorating its Value, whereby the Assignees are deprived of the Benefit which they would have otherwise enjoyed, as in Case of running down a Ship, or cutting Timber, whereby a greater Injury was sustained than the mere Value of the Timber fallen, has never yet been fully considered; and that it is unsettled whether—1stly, the Assignees would recover in an Action stating the special Circumstances—or 2dly, the Bankrupt could recover, and the Bankruptcy would afford no Defence—or 3dly, whether the Assignees could compel the Bankrupt (*a*) before or (*b*) after his Certificate to allow them to institute such Action in his Name—or 4thly, supposing there not to be such Power, whether, if the Bankrupt did in Fact bring such Action after his Certificate, the Assignees could claim the Damages and Costs—or 5thly, whether the Defendant, who has committed the Injury, can altogether escape from making Satisfaction. I was once consulted on a Case in which some of these Difficulties occurred, but I believe that no legal Proceedings were in Fact instituted.

II. CONTINGENT INTERESTS.

2. *Contingent Interests, Legacy.*—The Benefit of a Contingent Legacy to the Bankrupt passes to the Assignees, Higden v. Williamson, 3 P. Wms. 132, 2 Atk. 420. The Possibility under an executory Devise, being coupled with an Interest, is also assignable, and (come semble) Passes under the Bankruptcy. This differs materially from the Case of an Heir-at-Law on whom the Estate does not descend until after the Certificate, and who has no previous Right which can pass to the Assignees, Mott v. Fearne, Ambler, 394.

III. THINGS NOT SALEABLE.

3. *Things not saleable.—Presentations to a Church.* It is agreed in all the Books, that the Bankrupt himself shall present to the void turn of a Church, such Right of Presentation not being a saleable Property.

Offices.—As to Offices, there is a Distinction between Offices saleable and those not so. Offices that Concern the Administration of Justice, as that of Serjeant at-Mace, for executing Writs in the City of London, Lowfield's case, 1 Atk. 212, the Office of Sworn Clerk in Chancery, Bristow's Case, ibid, are not saleable. The Appointment of a Jew Broker, in the City of London, is only a Licence and not saleable, ex-parte Lyons. Ambler 89.

The Profits of a Benefice are not disposable under a Commission of Bankrupt. ex-parte Meymot, 1 Atk. 196.

The Pay or Half-Pay of an Officer in the Army is not assignable, and cannot be affected by a Commission of Bankrupt, Cathcart v Blackwood, in the House of Lords, 1765, Barwick v. Read, 1 H. B 627, Flarty v. Odlam, 3 T. R. 681, Lidderdale v. D. Montrose, 4 T. R. 248, Slone v. Lidderdale, 2 Anstr. 533. In Stuart v. Tinker, 2 Bl. 640, in was held, that the Half-Pay of an Officer was assignable in Equity, and that the Assigness might maintain an Action of Assumpsit, but this is clearly over-ruled by subsequent Authorities.

The following Cases respecting Offices require to be examined with some Particularity. Ex-parte Butler and Parnell, 1 Atk. 210, Ambler 73. The Bankrupt had purchased the Office of Under-Marshal of the City of London, to which a certain Salary and Payments were attached, and which was granted by the Lord Mayor and Court of Aldermen, Quandire se bene gerserit. Upon Application by the Assignees to the Lord Mayor and Court of Aldermen, for Liberty to sell the Office, they declared that they could not do it without the Bankrupt's Consent, which he refused to give. Upon Petition to Lord Hardwicke, C. after some general Observations as to his Opinion that the Commissioners

Fees, Annuities, Offices, Goods, Chattels, Wares, Merchan-

might take Order of the Profits of the Office until Certificate, he expressed his Opinion, that the Assignees might sell the Place, and that the Office was not within the Statute 5 and 6 Ed. 6, as to the Sale of Offices, and declared that with the Consent of the Lord Mayor and Aldermen, the Bankrupt might depart with all his Interest in the Profits and Salary of his Office, and that the Assignees were at Liberty to treat for the Sale of them with a proper Person, and if they agreed, to apply to the Lord Mayor and Aldermen for Leave, and if they approved of it, the Bankrupt should attend them at their Court, and surrender the Office, &c. that such Person might be nominated, and appointed to succeed him; and his Lordship, (says Ambler), expressed himself with some Warmth, that if the Bankrupt should refuse in any Respect to conform to their Directions, he should stand committed till he did conform; he also said, according to the Report in Atkyns, that if an Officer in the Army should become a Bankrupt, he should have no Doubt but he had a Power to lay his Hands upon his Pay for the Benefit of his Creditors. It is hardly necessary to say, that this Opinion is completely contradicted by subsequent Authorities.

By a subsequent Report, 1 Atk. 215, it appeared, that the Assignees had agreed for the Sale of the Office to another Person whom the Lord Mayor and Aldermen were willing to accept, but the Bankrupt refused to surrender the Office, whereupon an Order was made for his Commitment, and he absconded, and kept out of the Way. The Lord Mayor and Aldermen were of Opinion, that they were not justified in admitting the Purchaser without an actual Surrender. It appeared, that the Office required constant personal Attendance, and that in Case of his Neglect, he might be dismissed, and the Court of Aldermen might admit any Person they should think fit. The Lord Chancellor said, he was in Doubt what Directions he should give, for he was of Opinion that he could not make an Order upon the Lord Mayor and Aldermen to admit the Purchaser, as it was entirely discretionary in them whom they should admit, and that he could not supply the Want of a Surrender, as in the Case of a Copyhold; but to the End that Justice might be done to the Creditors, he recommended it to the Lord Mayor and Aldermen, upon the Bankrupt's Non-Attendance, by which his Office was forfeited and vacated, to dismiss him, and to admit the Purchaser in his Room, upon Payment of the Sum agreed to be paid to the Assignees and the Admittance Fine to the City of London.

In Schellinger v. Blackerby, 1 Ves. 547, Lord Hardwicke having determined that the Office of taking Care of the Palace and House of Lords, which had been granted to Blackerby, his Executors, and Administrators, for 31 Years, should be subject to his Debts, it was referred to the Master, to see what were the Profits of that Office.—On Exception to the Report, the Question was, whether a Fee of 6s. 8d. a Day, (being an Allowance made by the Lord Chamberlain, for particular Services mentioned), should be held as Part of the Profits of the Office, it being said to be a voluntary Allowance of the Crown, by way of Satisfaction for particular Expences, in paying Labourers, &c. the Lord Chancellor said, it would be very extraordinary if this should not be subject to the Creditor's Satisfaction. In the Bankrupt Acts, Offices are expressly named as subject thereto: it is true it may be varied, but it is not pretended but that it is an Allowance paid Time out of Mind, nor shewn to be a new and particular Bounty, nor objected that it has not gone with the Office: if indeed it could be said to be Money laid out of his Pocket, there would be no Ground to consider it as Part of the Office; but it is not so, the Words of the Grant are cum omnibus aliis Vadiis Fœdis Proficuis Comoditatibus, which must

dises and Debts to be searched, viewed, rented and appraised

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The Commissioners may sell Bankrupts' Lands, Goods, &c.

take in something more than what are particularly there mentioned, (a), and there is Nothing more than this to be taken in. It was intended to be so, and the Words are proper for it. If not thus considered, it would be in Vain for a Court of Equity to hold any Office, to be subject to Creditors; for there are several Offices whereof the greatest Parts arise from a particular Warrant from the Crown, which if struck off, the other Parts of the Office would be worth Nothing.

There are two Cases, ex-parte Joynes, 1795, ex-parte Gilbee, 1796, mentioned in Cooke's Bankrupt Laws, where Gentlemen Pensioners, having become Bankrupts, were ordered to resign to the Nominee of the Assignees. I am not aware of the Nature of these Offices; whether they are such as the Bankrupt could, ad Libitum, have assigned to any Person at Pleasure, but the Cases are barely mentioned in general Terms, without any Argument or Discussion, and cannot assist in any Investigation as to the Propriety or Authority of the preceding Determinations.

The Nature of the Case of Schellinger v. Blackerby, or the Circumstances under which it was held, that the Office was subject to Debts, do not appear. I take it to be clear, that it was not a Case of Bankruptcy, as the Office was granted for a Term of Years to the Defendant, his Executors, and Administrators, it would seem necessarily to follow, that it was assignable, and would be within the immediate Operation of the Statutes of Bankruptcy; but it would be very difficult indeed to support the Doctrine which seems to be implied in that Case, and in ex-parte Butler, Ambler 74, that the Assignees or Creditors can take the Profits of such Office, while it continues to be held by the Bankrupt or Debtor, so far at least as the Cases may import an Obligation on the Bankrupt or Debtor to perform the Duties attached to the Office, in order to entitle them to such Profits; it being perfectly settled, that the Creditors in Bankruptcy have no Claim upon the present Labour of the Bankrupt, for their Benefit.

It remains to consider the Law of the Case ex-parte Butler, as applied to the Power of disposing of an Office requiring personal Service and Attendance, under the Authority of a Commission of Bankrupt. I apprehend it to be manifest from the Facts, that although a pecuniary Consideration is given for the Appointment to such Office, it is accompanied by a personal Confidence and Approbation, and that it would be out of the Power of the Person holding it, by his own Act and Authority, to transfer any legal or equitable Interest to another. It would be equally out of the Power of the Assignees to prevent the Bankrupt determining the Interest in the Office, by Surrender or Forfeiture for Neglect, or upon such Determination, to controul the full and absolute Authority of the Persons having the Appointment, as to the Nomination of a Successor, either gratuitously or upon the Payment of a Sum of Money, for their own Benefit; and the Case having ended in a mere Recommendation, which it was perfectly optional in the Court of Aldermen to accept or repudiate at their Pleasure, it follows that the Assignees do not acquire any Right in Rem which can be maintained against third Persons, or which is at all similar or analogous to the general Right, acquired in the Bankrupt's Property under the Commission.

The Warmth with which the Lord Chancellor declared, that he would imprison the Bankrupt if he did not comply with his Direction, is not the strongest Symptom of Confidence in his own inherent Authority over the Office itself; and the modern Doctrine in Cases of Bankrupt-

(a) This Kind of Argument, which is often resorted to, has always appeared to me to rest on Principles very untenable, by assuming, contrary to all Fact and Observation, that no superfluous or redundant Expressions are used in public or private Instruments.

13 Eliz. Cap. 7. A. D. 1750.

to the best Value they may: and by Deed indented, inrolled (6) in

cy is, that the Bankrupt is not bound personally to do any Act to give Effect to the Title of his Assignees, who can assert no other Right over the Property, (at least generally speaking), than such as they derive from the mere Force and Operation of the Statutes themselves. The Notion of assigning the Pay of an Officer in the Army, which Lord Hardwicke spoke of as a Matter not admitting of Doubt, is now fully exploded; but the Decision in ex-parte Butler would be perhaps more analogous to that of a Sale of the Commission itself, which it is evident could not be transferred under the Authority of the Bankrupt Law, and upon the whole, although the Decision is generally cited, as Matter of settled Authority, I cannot forbear entertaining considerable Doubts of its standing the Test of fair and deliberate judicial Enquiry.

V. PROPERTY UNDER RESTRAINT OF ALIENATION.

5. *Property under Restraint of Alienation.*—The Assignees are entitled to the Benefit of a Lease containing a Condition against Assignment, Goring v. Warner, 7 Vin. 85, 2 Eq. Co. ab. 100. It is observed by the Master of the Rolls, in Weatherall v. Geering, 12 Ves. 512, that that Decision was made by Lord Macclesfield, in Opposition to the Opinion of Sir Joseph Jekyll and the Tendency of the old Cases, and upon a strange Ground, that the Statute supersedes the Agreement; but that is determined—an express Proviso, for determining a Lease in Case of Bankruptcy, is decided to be legal, Doe v. Galliers, 2 T. R. 233. A Proviso to vacate the Lease, in Case the Lessee should set, let, assign, or otherwise depart with, the present Lease, or the Farm and Premises, was ruled to attach on the Lessee becoming Bankrupt and the Assignees taking the Possession. So an Annuity, to be paid into the Hands of the Annuitant only, and to cease and determine in Case of being alienated, determines by Bankruptcy, and does not pass to the Assignees, Dommett v. Bedford, 3 Ves. 149, 6. T. R. 684. But upon a Disposition to pay to A. B. to his own proper Hands, &c. to the Intent that the same should not be grantable, transferable, or otherwise assignable, by Way of Anticipation of any unreceived Payment, the Assignees were held to be entitled, upon A. B. becoming Bankrupt. Lord Eldon said, "It is not enough that the Testator has said, that the Fund shall not be transferred, in order to prevent that, it must be given to somebody else; unless therefore it falls into the Residue it is an equitable Interest, to which the Assignees are entitled." Brandon v. Robinson, 1 Rose 197.

VI. JOINTENANCY.

6. *Jointenancy.*—It seems to be agreed, that a Bankruptcy severs a Jointenancy.

VII. PROPERTY OF THE WIFE—TRUST PROPERTY.

7. *Property of the Wife.—Trust Property.*—With Respect to Trust Property, it has been already generally observed, that Property of which a Bankrupt is Trustee, is not affected by the Commission. The Cases of Property to which a Bankrupt is entitled, in Right of his Wife, and which can only be obtained through the Medium of a Court of Equity, form an extensive Field of Enquiry, but have not any particular Relation to the Bankrupt Law, the general Principle being clearly established, that the Right of the Wife to require a Settlement of Property which the Husband claims in her Right, and can only obtain through the Intervention of a Court of Equity, applies to a Claim by Assignees under a Commission as well as to a Claim by the Husband himself.

The Cases are stated at Length in the several Treatises of Equity and Bankruptcy, and in a recent Anonymous Publication on the Equitable Rights, &c. of Married Women.

It will, however be proper to mention the Case of Mitford v. Mitford, 9 Vesey, 87, in which it was held, that the Right of a Wife to the whole of her Legacy, was not divested by the Bankruptcy of her

one of the Queen's Majesty's Courts of Record, to make Sale 13 Eliz. Cap. 7. A. D. 1780.

Husband, the Property not having been reduced into Possession in his Life-time. See some Observations on this Subject, 1 Christ. 167. The general Question as to a legal Debt due to the Wife in Case of her Survivorship, seems to remain undecided. In Pingle v. Hodgson, 3 Ves. 617, Lord Loughborough decided against the Survivorship of the Wife, in the Case of Stock, and expressed himself in Favor of the Assignees, in Cases of Choses in Action generally, but the Correctness of his Opinion in that Respect seems to be questioned by Sir Wm. Grant, in Mitford and Mitford.

VIII. PROPERTY ABROAD.

8. *Property Abroad.*—It is fully settled by the Cases of Hunter v. Potts, 4 T. R. 182, Sill v. Worswick, 1 H. B. 665, Philips v. Hunter, 2 H. B. 402, that when a Creditor resident in England, obtains the Property of the Bankrupt, being in a different Country under the Authority of such Country, he is accountable for it to the Assignees, as part of the Estate of the Bankrupt. Upon this Point the Words *wheresoever they may be found or known,* in the present Subject are materially relied upon, in the Cases referred to. It was admitted that in such Case, a Creditor residing in the Foreign Country and obtaining Payment according to the Law thereof, would not be accountable for what he had received upon afterwards coming to England. It has been determined in Ireland, that a Creditor there obtaining Satisfaction by Attachment, is not entitled to hold the Property against the Assignees under a Commission in England, Neale v. Cottingham, 1 H. B. 132; and it was ruled by the Court of Session in Scotland, in the Case of the Royal Bank of Scotland v. Cuthbert, 1 Rose, B. C. 465, that where some Partners of a *Firm* resided in Scotland and others in England, and they had all committed Acts of Bankruptcy in England, the Title of the Assignees under an English Commission should be preferred to a subsequent Sequestration, both as to personal Estate and real Estate in Scotland, and it appears to be the Opinion of the Court, that e converso the Sequestration would be entitled to the Preference if prior in Point of Time. And see Silking v. Davies, in Dom. Pror. 2 Dow. 230.

With Respect to real Property in other Countries, there is greater Difficulty. In Selkrig v. Davies, 2 Dow. 231, 2 Rose 291, Lord Eldon speaking of the Case of the Royal Bank v. Cuthbert, says that, "In the very able and learned Exposition of the Grounds of the Judgment there, it appeared to have been taken for granted that the English Commission imposed not only only a moral but a legal Obligation on the Bankrupts to convey their real Property in Scotland to the Assignees. But according to the English Law, there was no Authority to compel a Bankrupt to convey the real Estate, and he knew that infinite Difficulty had occasionally resulted from that Circumstance. If this was a Defect, the Remedy must be applied, not by their Lordships in their Judicial Capacity, but by the Legislature.

IX. POWER OF APPOINTMENT.

9. In Thorpe v. Goodall, 1 Rose, B. C. 40, 270, 17 Ves. 270, it was ruled on Demurrer, that a Bankrupt, who has an absolute Power of Appointment, cannot be compelled to execute it in Favour of his Assignees. The Question whether they were intitled to the same Benefit as if the Power had been in Fact executed was mentioned at the Bar, but no Opinion intimated with Respect to it by the Lord Chancellor.—See Sugden on Powers, 154, (1st Edition).

X. NEWS WALK.

10. *News Walk.*—It was held by Lord Mansfield, in a Case cited by Sir J. Mansfield, C. J. 2, N. R. 67, that a *News Walk* was a Property distributable under a Commission of Bankrupt, and there are some Cases in which it is held to be Property distributable as Assets of a

13 Eliz. Cap. 7. A. D. 1750.

of the said Lands, Tenements and Hereditaments, and of all

Person deceased; and this Doctrine being taken for granted, has been reasoned upon as extending by Analogy to other Cases, but appears to me wholly unfounded in Point of Principle. It is quite clear, that any Person may take upon himself the Business of selling Newspapers in a given Beat as well as any other Business, without the Interference of any other Person previously engaged in a similar Business, and without incurring any kind of Responsibility by so doing, but the Kind of Preference which is given to a Person already in the Habit of supplying the Article to a given Set of Customers will in general prevent the setting up a rival Trade from being a beneficial Speculation. If the Person already engaged in such Occupation desists from continuing it, and another Person, finding the Ground beneficial, should carry a similar Set of Papers to the same Customers, he would most probably meet with sufficient Encouragement. The Person first engaged may therefore confer a material Benefit on another, by apprizing him of his Intention to desist, and at the same Time communicating to him the Names of the Persons who have been in the Habit of taking particular Papers. For this Information, accompanied by an Assurance that the Party professing to decline will not renew the Business, a Compensation may reasonably be given, which, in popular Language, is described as the Sale of a News Walk; but there is Nothing in the Bankrupt Law to require the Person engaged in the Business of selling Newspapers, upon becoming Bankrupt, to continue the Business until the Choice of Assignees, and then to relinquish it in Favour of another Person appointed by the Assignees, and enter into a Contract not to interfere with his Successor, much less is there any Thing to prevent a Person, to whom the Bankrupt may have communicated his Intention of desisting, from continuing to supply the same Set of Customers. In Cooke admix. v. Colcraft, 3 Wils. 380, the Defendant engaged to pay a weekly Sum to Cooke, the Husband of the Plaintiff, for his Life, and the like Sum to the Widow after his Decease, and entered into a Bond for Payment, Cooke engaging not at any Time thereafter to vend or sell any Newspapers, nor in any wise to deal as a Newsman. In an Action on the Bond, after the Death of Cooke, it was ruled, that the Defendant was not excused from the Payment of the weekly Sum, in Consequence of the Widow and Administratrix selling Newspapers. The Court said, the Covenant of Cooke was only a Restriction laid on himself, and must expire with his Life, and said, "Suppose Cooke had made a Stranger his Executor, who was a Newsman, should that Executor be hindered from being a Newsman? No certainly.—See Longman v. Tripp, 2, N. R. 67, in which the Right of publishing a Newspaper, called the Bristol Mercury, was taken for granted to be a Property affected by the Bankrupt Law. As to the general Interest in such Property, see Hogg v. Kirby, 8 Ves. 125, ante P. III. c. 1 No. 2 Note.

XI. GOOD WILL IN A BUSINESS.

11. *Good Will in a Business.*—The Question respecting the Property, as it is called, of a News Walk, rests very much upon the same Principles as the Establishment of any Branch of Business chiefly depending upon personal Connections, a Surgeon, an Attorney, a Surveyor, and Persons engaged in other Branches of Business frequently receive a Compensation for declining their Employment, recommending another as their Successor, and engaging not to practice within certain Limits. This Kind of Contract is in common Parlance designated as a Sale of Good Will, but it is impossible to suppose that upon any such Person becoming Bankrupt, his Assignees can insist upon his taking a similar Course, and compel the Bankrupt to similar Stipulations for a Consideration to be paid to themselves.

Deeds, Writings and Evidences touching only the same, be-

13 Eliz. Cap. 7. A. D. 1570.

These Principles are confirmed and recognized in the late Case of Crutwell v. Lye, 17 Vesey, 335, 1 Rose, 123, where the Assignees of the Defendant and his Partner sold to the Plaintiff the Carrying Business of George and Edward Lye, with the Good Will of their Premises, *and the Good Will of a long-established Trade*, &c. and the Defendant resumed the like Business, advertising, that being reinstated, by his Friends in the Carrying Business, his Waggons set out at the usual Hours, &c. and an Injunction to prevent his doing so was refused by the Lord Chancellor. There were special Circumstances, independently of the general Question, upon which it was contended, on the Part of the Plaintiff, that the Injunction should issue, and to which of Course it is not material to refer. Upon the general Question, the Lord Chancellor said—"The Consideration then is, what Importance is due to the Fact that their Premises and the Good Will of their Trade have been sold under a Bankruptcy; whether that will prevent the Bankrupt having Friends, whose Consciences were not affected from assisting him from immediately setting up his Trade again? And upon the best Consideration I can give to the subject, I do not think any of those Interests which the Bankrupt takes under his Commission, either by the Satisfaction of his Creditors, the Effect of his Certificate, or the Surplus, if any, of his Estate, from a Ground on which the Court can say that the Bankrupt shall not engage in the like Trade. Supposing, therefore, the Bankrupt not to have had any other Interests than those which have been stated as flowing from his Commission, there is no Principle upon which this Court could hold that he should not engage in the direct Trade by the same Roads. The Good Will, which has been the Subject of Sale, is Nothing more than the Probability that the old Customers would resort to the old Place. Fraud would form a different Consideration, but if that Effect is prevented by no other Means than those which belong to the fair Course of *improving* a Trade, in which it was lawful to engage, I should, by interposing, carry the Effect of Injunction to a much greater Length than any Decision has authorised or Imagination ever suggested.

In the preceding Case, a former Case was cited of Chantler v. Gardiner, in which a Compensation, given by the Legislature, to persons having the ancient legal Quays in London, for the Loss of their Employment, was held subject to the Bankrupt Laws, of which indeed it does not seem that any reasonable Doubt could be entertained, the subject Matter being a specific vested pecuniary Interest, although given in Consideration of the Relinquishment of an Advantage which possibly might not have been equally within the Reach of the Commission.

(6). This Statute does not limit any Time for the Inrolment, as is done by Statute 27 Hen. c. 16, with Respect to Indentures of Bargain and Sale, and 21 Jac. 1, c. 19. post No. 4, sec. 12. with respect to the Conveyance of Estates Tail; but the Assignees or Vendees take no Interest till Inrolment, and an Ejectment cannot be maintained upon a Conveyance under the Assignment, if the deed were not inrolled before the Action was brought, though it was inrolled afterwards, Pery v. Bowes, T. Jones, 196, Elliot v. Danby, 12 Mod. 3, Bennet v. Gandy, Carth. 178; and in Doe dem. Esdaile v. Mitchell, 2 M. and S. 446, it was held, that a Demise could not be laid before the Time of making the Bargain and Sale.—Query.—If the same Objection would not apply to stating it before Inrolment. If the original Deed is lost, the Counterpart cannot be inrolled as the Original, ex-parte Robson, Ambler 180. There must be a new Conveyance from the Commissioners to the Assignees of real Property accruing after the Bankruptcy, ex parte Proudfoot, 1 Atk. 253.

13 Eliz. Cap. 7 A. D. 1736.

nging to such Offender or Offenders, Debtor or Debtors; and also of all Fees, Annuities, Offices, Goods and Chattels; or otherwise to order the same for true Satisfaction and Payment of the said Creditors; that is to say, to every of the said Creditors a (7) Portion, Rate and Rate like, according to the Quantity of his or their Debts; and that every Direction, Order, Bargain, Sale and other Things done by the said Persons so authorised as is aforesaid, in Form aforesaid, shall be good and effectual in the Law, to all Intents, Constructions and Purposes, against the said Offender or Offenders, Debtor or Debtors, his or their Wife or Wives, Heir or Heirs, Child and Children, and such Person and Persons as by such joint (8) Purchase with the said Offender or Offenders as is aforesaid have or shall have any Estate or Interest in the Premises; and against all other Person or Persons claiming by, from or under such Offender or Offenders, Debtor or Debtors, by any Act or Acts had, made or done after any such Person shall become Bankrupt as is aforesaid; and also against the Lords of the Manors, whereof the said Copyhold or Customary Lands been holden, their Heirs, Successors and Assigns, and every of them.

Against what Persons the Commissioners Sale of a Bankrupt's Lands, Goods, &c. shall be available.

Vendees of Copyhold Lands shall compound with the Lords of the Manor for their Fines.

III. Provided always, and be it enacted by the Authority aforesaid, that all and every Person or Persons, to whom any such Sale of Copyhold or Customary Lands or Tenements shall be made, shall before such Time as they or any of them shall enter or take any Profit of the same Lands or Tenements, agree and compound with the Lords of the Manors of whom the same shall be holden, for such Fines (9) or Incomes as heretofore hath been most usual and accustomed to be yielded or paid therefore: And that upon every such Agreement or Composition, the said Lords for the Time being, at the next Court to be holden at or for the said Manors, shall not only grant unto the said Vendee or Vendees upon Request, the same Copy or Customary Lands or Tenements by Copy of Court-Roll of the same Manors for such Estate or Interest as to them shall be so sold, and reserving the antient Rents, Customs, and Services, but also in the same Court admit them Tenants of the same Copy or Customary Lands, as other Copyholders of the same Manors have been wont to be admitted, and to receive their Fealty accordingly.

The Commissioners shall declare to the Bankrupt how they have bestowed his Lands and Goods.

(7). General Assignees were first introduced by Stat. 5. Ann c. 22, S. 4.

(8). This Provision seems only to import that the Conveyance shall sever a Jointenancy, in like Manner as a Conveyance by the Bankrupt himself, and not to afford, (as has been supposed), any Warrant for the Modern Doctrine, that the Assignees shall take from a solvent Partner the Management of the Partnership Estate.

(9). If there is a Conveyance from the Commissioners to the general Assignees, under 5 Geo 2, c 30, and a subsequent Conveyance to a Purchaser, two Fines must be paid; Lord Hardwicke therefore recommended, that the Conveyance should be immediately from the

IV. Provided always, and be it enacted by the Authority aforesaid, that such of the said Commissioners as shall put the said Commission in Execution, shall upon lawful Request to them made by the said Bankrupts, not only make a true Declaration to the same Bankrupt, of the Employing and Bestowing of their said Lands, Tenements, Offices, Fees, Goods, Chattels and Debts so paid and satisfied to their said Creditors, but also make Payment of the Overplus (10) of the same, if any such shall be, to the said Bankrupts, their Executors, Administrators or Assigns.

13 Eliz. C. 7. A. D. 1570.

Commissioners to the Purchaser from the Assignees, Drury v. Man. 1 Atk. 96.

(10). In the Case of the Assignees of Gardner v. Skinner, 2 Sch. and Lefroy, 228, Lord Redesdale decided, that a voluntary Bond might be proved under a Commission, not for the Purpose of entitling the Party to a Dividend with the other Creditors, but for the Purpose of Payment out of the Surplus, after all the other Creditors are satisfied —(but see Observations, 1 Christian, 174).

It is foreign to this Part of the Work to discuss in what Cases a Creditor is or is not entitled to Interest under a Commission of Bankrupt, and which in every Case depends upon the express or implied Terms of the particular Contract; but it is agreed, that in all Cases Interest ceases from the Date of the Commission, unless all Debts are paid, and in that Case revives against the Claims of the Bankrupt to the Surplus, Bromley v. Goodere, 1 Atk. 75; although not as against his Allowance, ex-parte Morris. 3 Bro. 79.

In ex-parte Cocks, 1 R. 317, S. C by Name of e. p. Wilcocks, 2 Chr. 504, An. 1813, (2. 1. Rose), Lord Eldon said, he did not know upon what Ground other Creditors, whose Interest was computed to the Time of the Commission, should receive the Remainder of their Interest from the Surplus; upon which Mr. Christian observes. "I conceive no better Reason can be given than by a Reference to the Statutes. By the 13 Eliz. the Commissioners shall take Order for the true Satisfaction of the Creditors. The 1 Jac. 1 c. 15, s. 15, declares expressly, that the Bankrupts shall have full power to recover the Remainder, after the full *Satisfaction* of the said Creditors. A Creditor, whose Debt carried Interest, certainly had not full Satisfaction, until he was paid both Principal and Interest; and it would not have been a harsh Construction, if all other Creditors had received Interest from the Date of the Commission, before any Property had been restored to the Bankrupt. In the Case of a Country Banker, who had £100,000's Worth of Notes on Demand in Circulation, in Case of a sudden Run upon him, though he was solvent, he might, by becoming Bankrupt, save the Interest till his Estate was divided, and thus gain an Advantage of many thousand Pounds."—Vol. 2, 504. In this View of the Subject I entirely accord. Upon the Bankruptcy taking place, the Creditors have a fair Right to have the Assets immediately converted into Money, and rendered available in Satisfaction of their Debts. But a Prospect of Advantage may reasonably induce a Consent to delay the Conversion and Collection of the Property and the immediate Reduction of the Amount of it to a Certainty, by a Sale of all the Assets and Claims, subject to all Risques. This Postponement, however, should operate to the Benefit of the same Persons who would have had the Benefit of an immediate Distribution; and by receiving their respective Shares of the general Funds, would have had an Opportunity of investing them at Interest, or otherwise applying them to their own Advantage, and the Bankrupt has no Right to require

13 Eliz. Cap. 7. A. D. 1750.

The Remedy where Goods or Debts of Bankrupts be in the Hands of other.

V. And be it further enacted by Authority aforesaid, that if after any such Act or Offence committed, and Complaint thereof made to the said Commissioners so to be appointed as is aforesaid, or the more Part of them, by any Party grieved as is aforesaid, concerning the Premisses, knowing, supposing or suspecting any of the Goods, Chattels, Wares, Merchandises or Debts, of such Offender or Offenders, Debtor or Debtors, to be in the Custody, Use, Occupying, Keeping or Possession of any Person or Persons, or any Person or Persons to be indebted to any such Offender or Offenders, do make Relation thereof to the said Commissioners so to be appointed or the more Part of them; that then the said Commissioners, or the most Part of them, shall by Virtue thereof and of the said Commission have full Power and Authority to send for and call before them by such Process, Ways or Means as they shall think convenient by their Discretions, all and every such Person and Persons so known, suspected or supposed to have any such Goods, Chattels, Wares, Merchandises or Debts in his or their Custody, Use, Occupation, Keeping or Possession, or supposed or suspected to be indebted to such Offender or Offenders; and upon their Appearance to examine them and every of them, as well by their Oaths as otherwise, by such Ways and Means as the said Commissioners or the more Part of them by their Discretions shall thing meet and convenient, for and upon the Specialty, Certainty, true Declaration and Knowledge of all and singular such Goods, Chattels, Wares, Merchandises and Debts of any such Offender or Offenders, as be supposed or suspected to be in his or their Custody, Use, Occupation or Possession, and all such Debts as by them or any of them shall be supposed or suspected to be owing to any such Offender or Offenders. (11).

VI. And if any such Person or Persons upon such Examination do not disclose and plainly declare, and shew the whole Truth of such Things as he or they shall be examined of concerning the Premisses to his Knowledge, or do deny to swear; then every such Person or Persons so denying to swear, or being examined do not declare the plain and whole Truth concerning

that the Distribution to the Creditors shall be deferred, in Order to acquire a Surplus for himself at the Expence of a Loss to them of the Interest for the Period of Time between an immediate and a distant Distribution. If the Effects could, in the first Instance, be rendered available for 19s. in the Pound, and by Postponement for five Years could be made to produce 21s. the Creditor would suffer a material Loss from the Postponement, which would have the Effect of giving 1s. (the Excess beyond the Debt), to the Bankrupt, at their Expence, and however much the Figures may be varied, the Principle is the same. There is great Force of Reason in a Maxim of the Civil Law, an Attention to which might have had the Effect of preventing many Decisions which are really unjust, from having the Character of Equity and Moderation: —*Minus solvit, qui tempore minus solvit.*

(11). See the Power of Examination more fully provided for in the next Number, sec. 10.

the Premisses, upon due Truth thereof to be made before the said Commissioners, or the more Part of them so to be appointed as is aforesaid, by Witness, Examination, or otherwise, as to the said Commissioners or the more Part of them shall seem sufficient in that Behalf, shall lose and forfeit double the Value of all such Goods, Chattels, Wares, Merchandises and Debts by them or any of them so concealed, and not wholly and plainly declared and shewed: which Forfeiture shall be levied by the said Commissioners or the more Part of them, of the Lands, Tenements, Hereditaments, Goods and Chattels of such Person so denying to swear, or not disclosing the whole Truth as is aforesaid, by such Ways and Means, and in such Manner and Form, as is before limited and appointed for the principal Offender or Offenders, Debtor or Debtors: and the same Forfeiture or Forfeitures to be distributed or employed to and for the Satisfaction and Payment of the Debts of the said Creditor or Creditors, in such like Manner, Rate and Form, as is before declared concerning the Ordering of the Lands and Tenements, Offices, Fees, Goods and Chattels of such Offender or Offenders, Debtor or Debtors, as is aforesaid.

Forfeiture recovered employed

VII. And be it further enacted, that if at any Time before or after that any such Person or Persons departeth the Realm, or shall keep his or their House or Houses, or otherwise absent him or themselves, or take Sanctuary, or suffer him or themselves to be arrested, outlawed, or yield his or their Bodies to Prison as is aforesaid, any Person or Persons do fraudulently by Covin or Collusion, Claim, Demand, recover, possess or detain any Debts, Duties, Goods, Chattels, Lands or Tenements, by Writing, Trust or otherwise, which were or shall be due, belonging or appertaining to any such Offender or Offenders, other than such as he or they can and do prove to be due by Right and Conscience in Form aforesaid for Money paid, Wares delivered, or other just Consideration or Cause reasonable, to the just Value thereof, before the said Commissioners so to be appointed, or the more Part of them, as is aforesaid, and the same to proceed *bona-fide*, without Fraud or Covin: that then every such Person or Persons so craftily demanding, claiming, having, possessing or detaining any such Debt Duty or other Thing as is aforesaid, shall forfeit and lose double as much as he or they shall so claim, demand, detain or possess, which said Forfeiture shall be levied, recovered and employed in Manner and Form as is afore rehearsed.

A Penalty against them that detain the Goods of Bankrupts.

VIII. Provided also, and be it enacted by the Authority aforesaid, that if it shall fortune the Creditors of any such Bankrupt as is aforesaid, to be satisfied and paid off their Debts and Duties of or with the proper Lands, Tenements, Goods, Chattels and Debts of the said Bankrupts, or of or with the same and some Part of the Forfeitures of the said double Values

How the Forfeitures shall be bestowed after the Bankrupt's Debts be paid.

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to be forfeited as is aforesaid, and that there shall remain an Overplus of the said Forfeitures of the said double Values; that then the one Moiety of the said Overplus of the said Forfeitures of the double Values so remaining shall be by the said Commissioners so executing the said Commission, within convenient Time after the levying thereof, paid unto the Queen's Majesty, her Heirs and Successors; and the other Moiety thereof shall be by the said Commissioners employed and distributed to and amongst the Poor within the Hospitals in every City, Town, or Country, where any such Bankrupt shall happen to be; any Thing in this Act to the contrary thereof notwithstanding.

A Remedy against him who withdraweth him Dwelling Place.

IX. And be it further enacted by Authority aforesaid, that if any such Person or Persons which is or shall be indebted, do of Purpose withdraw him or themselves out of or from his or their usual Mansion House or Houses; that then upon Complaint thereof made to the said Commissioners, having Authority as is aforesaid, the same Commissioners or the more Part of them shall by Virtue and Authority of this present Act, have full Power and Authority to award five Proclamations to be made in the Queen's Name, upon five sundry Market Days, in such Places near the place where such Bankrupt hath most commonly dwelled or made his Abode, commanding him or them by the same Proclamation in the Queen's Name, to return with all convenient Speed, and to yield his or their Body before the said Commissioners having Authority as is aforesaid, or one of them, at such Time and Place as by the said Proclamation shall be appointed: and if the said Person do not according to such Proclamation, repair and yield his or their Body as is aforesaid, that then the Body of all and every such Offender or Offenders shall be adjudged, taken and deemed, to all Intents and Purposes, out of the Queen's Protection: and that also every Person and Persons that shall willingly and wittingly help to hide or convey, or shall willingly and wittingly receive, detain or keep secretly, any Person or Persons so demanded by Proclamation, as is aforesaid, shall suffer such Pains by Imprisonment of his or their Bodies, or pay such Fine to our Sovereign Lady the Queen's Majesty, her Heirs and Successors, as to the said Lord Chancellor or Lord Keeper of the great Seal (being informed thereof by the Commissioners so to be appointed, as is aforesaid, or the more Part of them) shall seem meet and convenient for their said Offence or Offences.

A Remedy for the Creditor if he be not satisfied for his whole Debt.

X. Provided always, and be it further enacted, that if the Creditors of any such Offender or Offenders, Debtor or Debtors, which so do depart the Realm, keep his or their House or Houses, or otherwise absent or withdraw him or themselves into Places unknown, or take Sanctuary, or will suffer him or themselves to be arrested or outlawed, or yield his or their

Bodies into Prison purposely and for the Causes aforesaid, be not fully satisfied, or otherwise contented for their Debts, and Duties, by the Ways and Means before specified and declared: that then the said Creditor or Creditors, and every of them, shall and may have their Remedy for the recovery and levying of the Residue of their said Debts or Duties whereof they shall not be fully satisfied, paid or otherwise contented in Form aforesaid, against the said Offender or Offenders, in like Manner and Form as they should and might have had before the Making of this Act; and that the said Creditor or Creditors, and every of them, shall be only barred and excluded by Virtue of this Act, of and for every such Part and Portion of the said Debts and Duties as shall be paid, satisfied, distributed or delivered unto him or them, by Order of the said Persons, as is aforesaid, and of no more Portion or Parcel thereof; any Thing herein specified that may be taken or construed to the contrary notwithstanding. (12).

13 Eliz. Cap 5. A. D. 1750

(12). The Commission operates upon all Property afterwards acquired by the Bankrupt until the Allowance of his Certificate, and no new Assignment from the Commissioners is Requisite with respect to personal Property so acquired, Kitchen v. Bartsch, 7 East. 53

In Chippindale v. Tomlinson, Co. B. L an Attorney brought an Action for Business done, to which the Defendant pleaded that the Plaintiff was a Bankrupt:—the Replication averred, that the Business was done after the Commissioners' Assignment, and for the necessary Maintenance and Support of himself and Family. Upon Demurrer, Lord Mansfield said, the only Question is, whether the Assignees of a Bankare entitled to the Profits arising from the personal Labour of a Bankrupt. That they cannot let out the Bankrupt; they cannot contract for his Labour. Buller J. referring to the Expressions of Lord Hardwicke, in ex-parte Proudfoot, "that all the Bankrupt's future Estate is affected by the Assignment," observed that he evidently meant, that if the Assignees desire it, the Bankrupt must deliver it up, and so far the Assignment affects it, but no other Person can have the same Plea. It is certain that Lord Hardwicke meant to go no further than the Case of Ashley v. Kell, 2 Str. 1207, (infra), which is decisive of his Meaning, and Judgment was given for the Plaintiff

In Silk v. Osborn, 1 Esp cas. 140, being an Action by an uncertificated Bankrupt, for Work, Labour, and Materials Lord Kenyon admitted the Authority of the preceding case, and said, he was further of Opinion, that when the Materials furnished were necessary to the Bankrupt's Labour, that in such a Case the Work and Materials furnished became blended together, and formed one joint Cause of Action, upon which the Bankrupt might sue, and was entitled to recover, and however the Question might be between the Bankrupt and his Assignees, as they might certainly take whatever personal Property belonged to him, without any new Assignment, it did not lie in the Mouths of third Persons to set up such a Defence.

In Evans v. Brown, 1 Esp ca. 170, Lord Kenyon permitted an uncertificated Bankrupt to recover Money lent after the Bankruptcy.

In Fowler v. Down, 1 Bos. and Pul. 546, it was ruled by the Court of C. B. that an uncertificated Bankrupt might maintain Trover for subsequently-acquired Property; and by Heath J. "The Bankrupt has a defeasible Property, which none but the Assignees can defeat. The same Point was ruled on Demurrer in B. R. in Webb v. Fox, 7 T. R. 391.

13 Eliz. Cap. 7. A. D. 1750. Lands, &c. extendable which be purchased, or do descend to a Bankrupt.

XI. Provided always, and be it also enacted by the Authority aforesaid, that if any Person or Persons which is or shall be published and declared to be a Bankrupt by Virtue of this Act, shall at any time after purchase any Lands, Tenements, Hereditaments, free or copy, Offices, Fees, Goods or Chattels: or that any Lands, Tenements, Hereditaments, free or copy, Offices, Fees, Goods or Chattels, shall descend, revert, or by any Means come to any such Person or Persons, being Bankrupts as is aforesaid, before such Time as their Debts due to their Creditors shall be fully satisfied and paid, or otherwise agreed for; that then the said Lands, Tenements, Hereditaments, as well free as copy, Offices, Fees, Goods and Chattels, shall by Virtue of this Act, by the said Commissioners to be appointed, as is aforesaid, or the more part of them, be bargained, sold, extended, delivered and used for and towards the Payment of the said Creditors, in such like Manner and Form as other the Lands, Tenements, Hereditaments, free or copy Offices, Fees, Goods and Chattels of the said Bankrupts, which they had when they were declared first to be Bankrupts, should or might have been bargained, sold, disposed or used by Virtue of this Act.

Lands conveyed away before the Party become Bankrupt.

XII. Provided always, that this Act shall not extend to any Lands, Tenements or Hereditaments, free or copyhold, which heretofore have been assured by any such Bankrupt, or hereafter shall be assured by any Bankrupt before he become Bankrupt: so always that such Assurance be made *bona-fide*, and not

In Kitchen v. Bartsch, 7 East. 53, being an Action for Money lent on a Promissory Note, the Defendant pleaded the Bankruptcy of the Plaintiff, and that the Assignees had required him to pay them the Money. The Plaintiff replied, that the Cause of Action arose after the Assignment, that the Defendant had treated the Plaintiff as a Person capable of receiving Credit, and that the Commissioners had not made any Assignment subsequent to the Cause of Action, and upon Demurrer, Judgment was given for the Defendant, as well upon the Ground already mentioned, that no new Assignment was necessary, as upon the Ground that it was competent to the Assignees to disaffirm the Right of the Bankrupt, and that they had disaffirmed it by insisting upon their own Claim.

In Coles v. Barrow, and ab. 3 Taunt, 754, the Bankrupt brought an Action against his Assignees, for Work and Labour done by him for them subsequent to the Commission. Mansfield C. J. nonsuited the Plaintiff, and upon a Rule for new Trial, it was held that the Action was maintainable. Heath J. chiefly relied upon some Payments having been made. Chambre J. said, "This Case is infinitely stronger in Favour of the Bankrupt than Chippendale v. Tomlinson. Here is an express Assent when the Assignees employ the Bankrupt, and have held all the Benefit of his Labour, and made him a Payment in Part; I think it would be a monstrous Thing if this Action was not maintainable. A Seat in the Court was at that time vacant, and afterwards Mansfield C. J. in delivering the Opinion of the Court, said, "My two Brothers are of Opinion that the Nonsuit was wrong. I was of another Opinion, as thinking that all Rights and all Goods due to the Bankrupt are vested in the Assignees. I have never been able to change my Opinion, but I now entertain a considerable Degree of Doubt, on Account of the Opinion of my learned Brothers."

Eliz. Cap. 7
A. D. 1570.

to the Use of the Bankrupt himself only, or of his Heirs: and that the Parties to whose Use such Assurance hath or shall be made, be not at or before the Making of such Assurance, privy or consenting to the fraudulent Purpose of any such Bankrupt, to deceive his Creditors. 21 Jac. I. c. 19.

In Ashley v. Kell, 2 Str. 1207, it was held, that though future Effects of a Bankrupt, against whom two Commissions had issued, were by 5 Geo. 2, liable to be seized for the Benefit of Creditors, yet the Bankrupt had in the mean Time such a Property in them as enabled him to transact and sell to a bona fide Purchaser. This Case is not very distinctly stated, and from the Reference to the Provisions in 5 Geo. 2, as to two Commissions, it would seem that the Question related rather to the Case of a Bankrupt who had obtained his Certificate but not paid 15s. in the Pound, than to the Case of an uncertificated Bankrupt. But as no Instances have occurred of Actions being maintained against Persons to whom uncertificated Bankrupts had disposed of Property in the regular Course of Business, it seems to have been commonly taken for granted, that such Actions would not lie. It has been very lately decided, that an uncertificated Bankrupt may Petition for a Commission, if his Assignees make no Claim to the Debt, e. p. Cartwright, 2 R. 200.

With Respect to the general Subject of this Note, and the Question how far a second Commission can be sustained against an uncertificated Bankrupt, see Let. Rom. Sec. 29; and see Everett v. Backhouse, 10 Vesey, 94.

See this Power more fully provided for in the following Number, Sec. 10.

I. Jac. I. C. XV.

I. Jac. I. c. XV. A. D. 1604.—An Act for the better Relief of the Creditors against such as shall become Bankrupts.

An Exposition and Addition to the Statute of Bankrupts, made 34 and 35 H. 8. c. 4. 13 Eliz. c. 7.

FOR that Frauds and Deceits, as new Diseases, daily increase amongst such as live by buying and selling, to the Hindrance of Traffick and mutual Commerce, and to the general Hurt of the Realm, by such as wickedly and wilfully become Bankrupts: and for that the Description of a Bankrupt in former Statutes is nor so fully expressed, nor the Power given thereby to the Commissioners for Bankrupts so large, as is meet in such Cases of Deceit, to prevent the deceitful Actions of Bankrupts.

Who shall be adjudged a Bankrupt.

II. For Remedy whereof, be it therefore enacted by our Sovereign Lord the King, and by the Lords Spiritual and Temporal, and Commons, at this present Parliament assembled, and by the Authority of the same, that all and every such Person and Persons using or that shall use the Trade of Merchandize, by way of Bargaining, Exchange, Bartry, Chevisance, or otherwise in Gross, or by Retail, or seeking his, her, or their Trade of Living by buying and selling, (1) and being a Subject-Born of this Realm or any the King's Dominions or Denizen, who at any time sithence the first Day of this present Parliament, or at any Time hereafter, shall depart the Realm, (2) or begin to keep his or her House or Houses (3) or otherwise

(1) For the Law as to Trading, see the next Number.

(2.) A Person generally resident in Ireland, having a Partner in England, and being here upon the Apprehension of being arrested, returns to Ireland sooner than he would have done if it had not been under the Influence of such an Apprehension: this is a Departure within the Statute, Williams v Nunn, 1 Camp 152, 1 Taunt. 270. Parr advertised a Ship to sail for Monte Video, intimating that he should go out in the Ship, with Intention of settling at Monte Video. Upon a Question as to his Departure being an Act of Bankruptcy, Lord Eldon said, " I agree, if a Man, in embarrassed Circumstances, departs the Realm, there is a strong Evidence of an Intention to delay his Creditors, but I do not go the Length of saying that his being pressed by Debts at the Time is conclusively an Act, because much must depend upon the Circumstances of his Conduct at the Time of his Departure; and it is a singular Circumstance, if his Intention were to delay his Creditors, that he should have taken the very Step to prevent his putting that Intention into Effect. He would never have circulated that Advertisement, if his Intention were such as has been contended. There is no Evidence, that at the Instant of his Departure, he departed the Realm with Intention to delay his Creditors," ex parte Osborne, 1 Rose, 387, 1 B. and V 177, and see Note 4 infra.

(3.) In Heylor v. Hall, Palmer 325, it was agreed, that if any one kept himself in his House for a long Time, this nevertheless did not make him a Bankrupt, but if he hide himself in his House for an Hour, to put off or defraud his Creditors, it makes him a Bankrupt.

The usual Evidence of this Act of Bankruptcy is, that the Party directed himself to be denied to a Creditor, and was denied accordingly, and this was held by Lord Kenyon and the Court of King's Bench to

to absent (4) him or herself, or take Sanctuary, or suffer him or herself willingly to be arrested for any Debt, or other Thing

1 Jac. I. Cap. 15. A. D. 1604.

be necessary, in Garrett v. Moule 5, T. R. 575; but it has been strongly intimated by Lord Ellenborough, in Robertson v. Liddell, 9 East, 487, (mentioned infra, with Respect to its principal Point), that actual Denial was not necessary, and which Doctrine seems to be now established by the Case mentioned in the Sequel of the present Note. And if not, all the Cases in which Doubts are suggested as to the Sufficiency of a Denial to a Clerk or Servant are immaterial. A Trader, who had given a general Order to be denied, upon a Denial being made, followed the Creditor within two Minutes, and said, "I am not afraid of you, I am afraid of Hill." This was held a complete Act of Bankruptcy, Mucklow v. May, 4 Taunt. 479. In Dudley v. Vaughan, 1 Camp. 271, Lord Ellenborough said, "that an authorised Denial to a Creditor is the most usual and familiar Evidence of beginning to keep House, but it is not the only Evidence. If a Trader has no Servant, the Act cannot be proved through such a Medium. In that Case, if he shuts himself in his House, debarring all Access to it, whereby his Creditors are delayed, an Act of Bankruptcy is established. And generally, if a Trader secludes himself in his House, to avoid the fair Importunity of his Creditors, who are thus deprived of the Means of communicating with him, he begins to keep House. Here the Question is on the Intent; therefore, (speaking in Allusion to the particular Circumstances), if he withdrew from the Counting-house to the Parlour, for Privacy and Seclusion, and with a View to avoid the personal Solicitation of his Creditors, by so doing he committed an Act of Bankruptcy, and in Bayley v. Schofield, 1 M and S. 338, when the Party gave Directions to be denied, and continued a Month in his Bedchamber, except coming down on Sundays for a little Air, this was held sufficient, and all the Judges held, that a Denial was not essential them there expecting his Return, but he never returned, and went to to an Act of Bankruptcy by beginning to keep House. An Act of Bankruptcy may be committed by Denial to a Person, who knows the Debtor is in the House, the Proof of beginning to keep House depending not upon the Possibility of Access to him, but upon the Intention of the Denial, per Lord Eldon, ex-parte Bamford, 15 Ves. 459, and in ex-parte Harris, 2 Rose, 67, the Denial was to a Creditor who came not to get his Debt, but to get Leather, and buy it out." Lord Eldon said, "If a Trader, desirous of avoiding the Access of his Creditors, upon their ordinary Demands, and in a Course of Business, has given Orders generally to be denied, and is denied it is an Act of Bankruptcy. It is not their Object in Calling which the Statute contemplates, but his Intention in being denied, (in this Case there was an actual Denial, but the Case did not require entering into the general Argument how far that is necessary). In Dickenson v. Foord, Barnes, 160, a Person being arrested, and the Sheriff's Officer having taken his Word to put in Bail, kept at Home, declaring he did so in Order to avoid the Consequences of the former Arrest; this was ruled to be an Act of Bankruptcy—"*He kept House, and declared the Intent to defraud Creditors.*" This Case seems to have been overlooked in several subsequent Cases which turned upon the Necessity of actual Denial, but it should seem, that the merely Staying at Home without *more*, being ready to see any Person at Home, would not be held an Act of Bankruptcy.

In ex-parte Foster, 1 Rose, 50, it was held, that if a Denial was not connected with a preceding Direction, the subsequent Approbation of it amounts to Nothing. In that Case there had been a Direction to deny, and the Question—whether that was sufficient, unconnected with the subsequent Denial, seems not to have been adverted to.

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not grown or due for Money delivered, Wares sold, or any other just or lawful Cause, or good Consideration on Purposes, or hath or will suffer him or herself to be outlawed, or yield him or

By Lee, C. J. "the Denial must be with the Intent to delay Creditors; they being denied, when sick in Bed or engaged in Company, will be no Act of Bankruptcy;" and he held the same where the Denial was by Agreement, in order to take out a Commission, Field v. Bellamy, Bull, N. P. 39. A Clerk, being in the Habit of calling during the Bankrupt's Dining at Home, the Bankrupt said, he was troublesome in calling at that Hour, and desired to be denied to him,—which was done. He was accessible to his other Creditors at Business Hours; and by Lord Ellenborough, "the Intention of the Act must be examined. A Trader may not only order himself to be denied at unseasonable Hours in the Night, but in the Course of the Day, when he is taking his Meals, and on other Occasions, which can easily be imagined, may refuse to see his Creditors, without meaning to delay them, and therefore without committing an Act of Bankruptcy, though they should be delayed, Smith v. Currie, 3 Camp. 349. As to the Intent, see Vincent v. Dawson, Note 8 infra.

A Denial to a Collector of Taxes, by the Assent of the Trader, is sufficient, per Mansfield, C. J. "I cannot say that the Crown is not a Creditor," Jeffs v. Smith, 2 Taunt. 401.

The Lord Chancellor held, that the Act of Bankruptcy could not be committed by Denial to a Creditor who called by Appointment on a Sunday, ex-parte Preston, 2 Rose, 21, 2 V. and B. 311.

(4) The Irish Statute, 11 and 12 Geo. 3, c. 8, adds after these Words, "so that his Creditors cannot have Access to him," which as Mr Christian observes, seems to give a very good Explanation of it. The following Cases turn upon this Act of Bankruptcy: the Bankrupt admitted several Creditors, but upon their Enquiring for Money, pretended to go out for it, and left his House under that Pretence, leaving the Billiard-room or Tavern. Lord Kenyon left it to the Jury to find an Act of Bankruptcy by absenting, Higg v. Spooner, 2, Esp Ca. 651. A Person who carries on Business at a Counting-house, going away, and taking all his Books, without any Intention of returning, though he may have a Country-house, at which he sleeps two or three Nights afterwards, Judine v. Da Cossen, 1 N. R. 234.

Two Partners, one residing in London, the other in Manchester, and the London Partner being on a Visit at Manchester, both left the House of Business there, with Intent, &c. Spencer v. Billing, 3 Camp. 310. The Party went to a Neighbour's Shop, said he expected to be arrested; when about to leave the Shop, a Sheriff's Officer having just gone down the Street, he went to a back Shop, that he might not be seen by the Officer, who he said he was afraid had a Writ against him, Chenoweth v. Hay, 1 M. and S. 676, III. These were all held to be Acts of Bankruptcy without absenting. As to whether this Act of Bankruptcy can be committed by a Person continuing abroad, having gone without any Intent to defraud or delay, &c. vide infra, N. 10.

In Gemmingham v. Laing, 2 Marshall, 236, (reported since this Note was first written), the Bankrupt, who was in the daily Habit of attending the Exchange, in the Course of Business, had frequently retired from 'Change, on the approach of any of his Creditors, desiring a Friend to tell them he was not there; and on one Occasion, had made an Appointment with one of his Creditors to meet him there, but had broken it, and being a Proprietor of a Theatre, and hearing that Sheriff's Officer was coming to look for him there, he retired behind the Scenes, requesting a Friend to tell the Officer that he was gone. It

herself to Prison, or willingly or fraudulently hath or shall procure him or herself to be arrested, or his or her Goods, Money or Chattels to be attached or sequestred, (5) or depart from his or her Dwelling-house, (6) or make or cause to be

was held, that he had committed an Act of Bankruptcy, by absenting himself, Gibbs, C. J. "It does not appear that the Bankrupt had any known Place of Abode; it is most probable that he had a Lodging somewhere, but there was one Place, viz. the Royal Exchange, at which he was always to be seen. It appears that he had several Creditors, at the Sight of whom he frequently left his Occupation on the Exchange, desiring his Friend to say that he was not there; and that, on one Occasion, he made an Appointment with a Creditor to meet him there. There cannot be stronger Evidence of a Man's absenting himself, supposing the Construction to be correct, that it is not confined to any particular Places. It would be difficult to distinguish what passed at the Theatre from what passed at the Exchange." I apprehend that the Place where the Appointment was broken was a material Ingredient in the Decision of that part of the Case, being the Bankrupt's known and accustomed Place of Resort on Business; and that the Decision of a Case in which there was so much of positive Act with the express View of withdrawing himself from the Access of his Creditors, is by no Means to be regarded as an Authority that the mere Non-Performance of an Engagement to call at a particular Place and pay a Debt shall be generally considered an Act of Bankruptcy. The Consequences of giving so extensive a Construction to the Bankrupt Laws will require very great Consideration. The mere Non-Existence of Authority with Respect to a Matter of such constant Occurrence, affords in itself no inconsiderable Argument of the general Feeling and Impression on the Subject; and considering how many Pettyfogging Attornies are always on the Hunt for Commissions, it is not by any Means desirable to carry the Law further than is absolutely required by the necessary Construction of the Statute or the express Authority of former Decisions.

(5). A fraudulent Execution is not within the Act, but is void Harman v. Spottiswood, Cooke, 110, Clavey v. Hayley, Cowp, 327. By the Irish Statute 11 and 12, Geo. 3. a fraudulent Execution is an Act of Bankruptcy.

(6.) Departing from a Public-house, where the Party is living at the Time, is an Act of Bankruptcy, but whether on this Ground or as otherwise absenting himself, does not distinctly appear. Holroyd v. Gwynne, 2 Taunt. 176, A. B. upon receiving a Message, that a Creditor would call for Money, directed his Clerk to say that he would not let him have it, and that he should go out of the Way till Dinner-time, which he did. This was left to the Jury, as to the Intent to delay, which being negatived, the Court of C. B. held that they could not say that the Conclusion was wrong. The same Person having appointed three of his Creditors to come and examine his Books, went to a Public-house, whither he directed his Clerk to bring him Intelligence of what passed, saying that he expected that, when they found how bad his Affairs were, if he were present, some harsh Language would pass, and possibly they might be induced to arrest him. The Jury having found against the Bankruptcy, the Court refused a Rule to shew Cause why there should not be a new Trial, saying, "the Person assigned the true Cause of his Absence, to avoid Altercation," Vincent v. Prater, 4 Taunt. 603 It seems very difficult to reconcile this Opinion with that of Lord Ellenborough, in Dudley v. Vaughan, sup. N. 3, that a Withdrawing to avoid the personal Solicitation of Creditors was an Act of Bankruptcy; or of Lord Eldon, ex-parte Harris, ibid, as to a

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made any fraudulent Grant or Conveyance (7) of his, her or

Trader desirous to avoid the Access of his Creditors upon their ordinary Demands. In Fact the most usual and familiar Cases of Bankruptcy are those of avoiding a personal Interview with the Creditors, rather than those of an Intention to elude legal Process.

(7.) A Grant or Assignment to constitute an Act of Bank ruptcy within the Provision must be by Deed, Martin v. Pewtress, 4 Burr. 2477, and this Construction has been followed ever since.

The Cases upon this Subject may be divided into such as relate to the Nature and Operation of the Instrument independently of any actual fraudulent Intention and such as are founded upon a fraudulent Intention.

1st.—With Regard to the first of these Points, it has been long settled, that an actual Assignment of all a Trader's Property constitutes an Act of Bankruptcy, although made only as a Security for Money advanced or other Considerations (such as Indemnity for giving Bail) cotemporary with the Assignment, Worsley v. De Mattos, 1 Burr. 467, Butcher v. Easto, 1 Doug. 295. So if the Assignment is made for securing a Debt to a Person at whose Suit the Trader is at the Time under Arrest, Newton v. Chantler, 7 East, 138.

The same Consequence attaches although the Assignment is made for the general Benefit of the Creditors, Kettle v. Hammond, Cooke, 86, Eckhart v. Wilson, 8 T. R. 140, Tappenden v. Burgess, 4 East, 230.

The original Propriety of such a Construction is very questionable, and has been not unfrequently disputed. I have elsewhere expressed my Ideas respecting the Expediency of continuing the Law in this Respect, in Case of a Revision of the general System, Let. Rom. Sec. IV. 6 and see the Observations of Lord Eldon, ex-parte Bourne, 16 Ves. 148. It has been very recently determined, that an Assignment for the general Benefit of Creditors is not fraudulent as against an Execution, under Statute 13 Eliz. c. 5, Meux v. Howell, 4 E. 1.

An Assignment is considered in this Respect, as comprizing all the Effects, although there may be a colourable Exception, ex-parte Foord, cited 1 Burr. 477, Law v. Skinner, 2 Bl. 996, Compton v. Bedford, 1 Bl. 362.

Lord Eldon intimated, that an Assignment of Debts would be an Act of Bankruptcy, if the Trader had no other Effects, ex-parte Richardson, 14 Ves 186; and it would seem, that any Assignment, although by specific Description, would be an Act of Bankruptcy, provided the Things assigned were in Substance the whole of the Property. But Query, if this would apply to an immediate Contract for a purchase or otherwise, applicable only to the specific Effects, and not contemplated at the Time as embracing the general Property, and in particular, whether it would apply to a Sale or other Disposition of real Estate.

The Assignment is an Act of Bankruptcy, although it contain a Proviso, that in Case all the Creditors whose Debts amount to £20 should not execute within a given Time it should be void, see Tappenden v. Burgess, 4 East, 230, where the Court held, that a Proviso, that the Deed should be void, if the Trustees thought fit to avoid it, was the same in Effect as to the Question of Bankruptcy as if there had been no such Proviso, as it was in the Meantime an operative Deed, and not like a Proviso, that the Deed shall be void, if Creditors did not assent, but if intended as a joint Deed of three, and only executed by one, who did not mean to execute, so as to give the Deed any Effect, unless the others directed their Shares to the same Purpose, Lord Eldon doubted whether that would be the legal Effect, at the same Time expressing his Opinion that the deed, with a Proviso, to be void, &c. if executed by all, would be an Act of Bankruptcy. Dutton v. Morrison, 17 Ves. 193. The Question was not decided, as other Acts of Bankruptcy were proved.

their Lands, Tenements, Goods or Chattels, to the Intent, or (8) whereby his, her, or their Creditors, being Subjects-born as

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A Creditor who has himself concurred in the Deed cannot afterwards set it up as an Act of Bankruptcy, Bamford v. Baron, 2 T. R. 524, n. and in ex-parte Cawkwell, 1 Rose, 313. Lord Eldon said, "it was clear, that if the Petitioner had acted under the Deed, although he may not have executed it, he cannot avail himself of it as an Act of Bankruptcy. But it is no Objection, in a Suit by the Assignees, that they were privy, provided the Petitioning Creditor was not so, Tappenden v. Burgess, 4 East 230. In the same Case it was held, that the Deed was not the less an Act of Bankruptcy, because executed for the Purpose of being used as such, and not intended to be acted upon.

It is fully settled in several Cases, that an Assignment of personal Property, without delivering Possession, is, except under special Circumstances, void as against Creditors, and fraudulent within the Statute, 13 Eliz. c. 5 and in Hassells v. Simpson, Doug 89, n. Manton v Moore, 7 T. R. 67, the Making such Assignment, without Possession being taken thereon, is assumed to be an Act of Bankruptcy, but neither of these Cases directly involved the Point, as in the first there was a general Assignment of all the Property, in the second a sufficient Delivery of Possession, and it seems very questionable upon Principle, whether the Statutes of Bankruptcy can be properly applied to such a Case, when there is no actual Intention to defraud, see Let. Rom. Sec. IV. 4.

2d.—Any Conveyance made with a fraudulent Intention is not only void but an Act of Bankruptcy.

In Cock v. Goodfellow, 10 Mod. 489, Small v. Oudley, 2 P. Wms. 427, Conveyances, made in Contemplation of Bankruptcy, in Favor of particular Creditors, are admitted to be good; but that Doctrine is now completely exploded by several Cases, and it may be stated as a settled Point, that whatever Disposition would be void as affecting Property in general, on the Ground of being a fraudulent Preference, (as to which vide Notes to Stat. 13 Eliz. c. 7 the last Number,) would, if made by Deed, be also an Act of Bankruptcy, Devon v. Watts, Doug. 86, (which was the Assignment of a particular Lease), Linton v. Bartlett, 3 Wils. 47, an Assignment of the third Part of his Effects, in Contemplation of Bankruptcy; but Query, whether the Principle was in this Case correctly applied, as the Security seems to have been cotemporary with the Loan, and not by Way of Preference, and a Conveyance of a third Part cannot with any Propriety be deemed a colourable Conveyance of the whole.

A Conveyance being made in Trust to satisfy a particular Demand of H. and B. and in the next Place to pay certain Debts to the Mother, Brother, and Sister of the Party, and it being stated that the Provision in Favor of H. and B. was made fairly, in Consequence of their Pressure, and from Fear of hostile Measures being pursued by them; but the other Provisions in Favor of the Mother, Brother, and Sister, were voluntary and fraudulent, and to give them a Preference in Contemplation of Bankruptcy, the Court of Common Pleas certified that the Deed was an Act of Bankruptcy.

In ex-parte Cockshott, 3 Bro. 502, upon the Question whether a Surrender of a Copyhold, with Intent to give a Preference, was an Act of Bankruptcy, it was objected, that it was not so because it was not a Deed. Lord Thurlow, without adverting to this Objection, held, that a Conveyance of a Copyhold was not within the Statute, because not liable to an Execution. Mr. Christian notices that these Words were not in the first Bankrupt Statutes, but were first introduced by by the present Statute, (1 Jac. 1), and that many Years before that a Commission of Bankrupt was one Mode of recovering just Debts.

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aforesaid, shall or may be defeated or delayed for the Recovery of their just and true Debts, or being arrested for Debt, shall

(8.) The Statute Eliz. has only the Words, *to the Intent or Purpose to defraud or hinder any of his Creditors*, and not the subsequent Words, *or whereby his Creditors may be defeated or delayed*. Mr. Christian observes, that so far as the Statutes 1 Jac. 1, c. 15, 21 Jac. 1, c. 19, have made an Alteration of the Description of the Trader or the Act of Bankruptcy, they must be considered to have repealed the Statute of Eliz. in Effect, and that it seems to be a Rule of Construction, founded in reason, that "Statutes introductive of a new Law, penned in the Affirmative, do always repeal former Statutes concerning the same Matter, as implying a Negative, which Rule is laid down in 1 Shower, 520; but I apprehend, that the Inference is larger than the Authority warrants, and that the Words *introductive of a new Law*, in the Opinion of Eyres, J. from which the Quotation is made, are very material, and cannot be considered as equivalent to *relating to the same subject Matter*. The Passage referred to is as follows, and the Words preceding those quoted are very important, "whether a subsequent Statute affirmative is a Repeal of a former Statute concerning the same Matter is a large field to walk in, and no way pertinent to this Case; for all those Statutes depend upon the Penning: and the Intent of the Makers must be collected out of the Words how far they meant to repeal or confirm; and therefore, leaving that Consideration, I shall rather betake myself to that which is more pertinent to our Purpose, which is that Statute *introductive of a new Law, &c.*" and in his further Examination of the Case, as well as in the Opinion of Gregory and Dolben, Justices, the Point, how far the Statute in Question, (1 W. and M. c. 21, respecting the Appointment of Clerks of the Peace), was introductive of a new Law, or whether that and the preceding Statute, 37 Hen. 8 c. 1, relating to the same Subject, were consistent, is very fully and distinctly considered. The Opinion of Holt, C. J. led to the same Conclusion of the Statutes being inconsistent without particularly and in Terms adverting to the Question how far the latter Statute was *introductive of a new Law*.

The Question therefore, upon the Effect of subsequent affirmative Statutes being a Repeal of preceding ones, must depend upon a minute and particular Examination of the immediate Object and Contents, and cannot be decided by so general an Application of the Maxim quoted as seems to have been supposed. Mr. Christian, in Support of his general Proposition, refers to ex-parte Caruthers, 9 East, 47, but that was decided without any Allusion by the Court to the Rule in Question, (although it is cited by the Reporter in a Note), and upon the special Consideration of the immediate Acts under Consideration, (the Act of 26 Geo. 3, which made the Insertion of the Name of a Seaman on Board a Greenland Vessel, in a certain List, which was held to be a Condition precedent being considered by Implication to be a Repeal of the Statute 13 Geo. 2, by requiring something more to be done than under that Statute was necessary to exempt from Impressment). The Statute 9 Geo. 1 c. 22, making the Killing of a Fallow Deer, in an inclosed Park, Felony, was held to be virtually repealed by 16 Geo. 3 c. 30, subjecting the same Offence to a pecuniary Penalty, 2 East, P. c. § 609, and it certainly is inconsistent that the same Act should be a Felony and a Misdemeanor, under the summary Jurisdiction of a Justice of Peace; but when Statute 20 Geo. 2 c. 19 subjects Artificers, guilty of certain Misdemeanours, to be committed to the House of Correction, *to be corrected*, and held to hard Labour not exceeding one Calendar Month, and the Statute 6 Geo. 3 authorizes the Justice to commit for not more than three Months or less than one; it is held, in Rex v. Hoseason, 14 East, 605, that the Proceeding might be under

after his or her Arrest, lie in Prison six Months or more upon

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either the one Statute or the other. So in Baldwin v. Blackhouse, 1 Bur. 595, it was held, that a Person returning, after an Order of Removal, might be committed either to the House of Correction, to be punished as a Vagabond, or to a public Workhouse, to be employed in hard Labour, under 13 and 14 c. 2, or to the House of Correction, to hard Labour, for any Time not exceeding a Month, under 17 Geo. 3.

In some Views of the Statute 1 Jac. it might have been very important to consider how far the Provision to which this Note was applied was inconsistent with the preceding Statute of Eliz. so as to render the latter of no Effect in the Discussion of the general Question, as to the Necessity that there should be a Concurrence of the Intention of Delay and of actual Delay, in Order to constitute an Act of Bankruptcy, or whether the Statute of Jac. had introduced the Fact of Delay as a substantive and sufficient Act of Bankruptcy. From the Course which the Decisions upon the Subject have finally taken, perhaps the Discussion may not be material. The Evidence of Intent, as accompanying the Act, has been alluded to in some of the preceding Rules, with Reference to the particular Acts of Bankruptcy under Consideration. Upon the general Exposition of the present Member of the Section, it was held in Woodier's Case, 1739, B. N. P. 39, Davies, B. L. 93, by Reeves, C. J. apparently without much Discussion, that the Bankrupt having gone Abroad on Account of having killed his Wife, but that the Creditors having been thereby in Fact prevented from receiving their Debts, the Departure was an Act of Bankruptcy. In ex parte Gulston, 1743, 1 Atk. 193, the Party had gone to Barbadoes publicly and openly—there was some Evidence of previous Denial to Creditors, the Delay of Creditors, though not precisely stated, seems taken for granted. The Lord Chancellor directed an Issue, upon which it was found, (Davies 40), that he was no Bankrupt, and the Ch. J. having stated himself to be satisfied with the Verdict, the Commission was superseded. In Raikes v. Pereau, at N. P. (1786), the Bankrupt had gone Abroad with a young Lady, who refused to live with him in England as his Wife, (he being a married Man), Buller J. thought, upon other Points of the Evidence, that there was an Intent to Delay, but said, that it was unnecessary to decide that Point, for it had been settled in Woodier's Case, that if a Man goes Abroad, though not with the Intention of delaying his Creditors, and in Fact they are delayed, it is an Act of Bankruptcy. He did not know that the Case had ever been over-ruled, and was bound to conform to decided Authority. He laid down the same Law as to Woodier's Case, having been always considered and acted upon as good Law, in Vernon v. Hankey, 1787. Upon the Authority of these Cases, it was contended, in Fowler v. Padget, 7 T. R. 509, that the Plaintiff, (having gone from Manchester to London, for the Purpose of securing some Property, and the Jury having found that the Intent in going to London was laudable, and that he had no Intent to defraud or delay his Creditors, but that Delay did certainly happen to ome Creditors), had committed an Act of Bankruptcy, and the Consequence of such Construction was fully brought to the View of the Court, and it was thereupon decided, that no Act of Bankruptcy was committed by such Departure; but Grose and Lawrence, J. expressed their Opinions, that Woodier's Case and Raikes v. Pereau might have been rightly decided, for though it was not the immediate Object of the Parties in those Cases to delay their Creditors by going Abroad, yet as that must be the necessary Consequence of such an Act, it would be Evidence of their intending to delay. In the Argument of this Case it was suggested, (which Suggestion I well remember came from Mr. Jus. Bailey, then Junior Counsel in the Cause, after the Case had been argued upon a broader Principle by Lord Ellenborough and Mr. Top-

1 Jac. I. Cap. 15. 1604. that Arrest, or upon any other Arrest or Detention in Prison

ping), that the Difficulty would be obviated by construing the Word OR in the Statute of James as AND, and the Court, in their Judgment adopted this Construction. The Law having been supposed to be settled agreeably to that Construction, the Court of K. B. in Barnard v. Vaughan, 8 T. R. 149, ruled, that though the Plaintiff had departed from his Dwelling-house, with the Intent to delay Creditors, yet as no Creditor appeared to have been delayed, no Act of Bankruptcy was committed, and that an actual Delay was as necessary as the Intent. The Inconvenience of this Opinion was soon very sensibly felt, and in two subsequent Cases, in the Appendix to Montague's Bankrupt Laws, vol. 2, 167, it was held, that the Proof of actual Delay was unnecessary. The general Question came very fully before the Court, in Robertson v. Liddell, 9 East, 487, wherein it was held, that a Creditor committed an Act of Bankruptcy by departing his Dwelling-house, or beginning to keep House, with Intent to delay, no Delay being proved to have taken place. Lord Ellenborough examined the Subject, in a very elaborate Judgment, and held, that the Words *or whereby* might be considered as if they had been *that thereby*, which gives the Words the same Effect as *Intent or Purpose* in the Statute of Elizabeth, and prevents this Act from operating in Restriction of that which it would otherwise do, and which, as might be collected from the Title, "for the better Relief of Creditors," could not have been intended.

In Ramsbottom v. Lewis, 1 Camp. 280, where the Bankrupt sailed for the Continent, under an assumed Name, with a Lady whom he had carried off from her Husband, Lord Ellenborough said, "to make this an Act of Bankruptcy, he must eo instanti have contemplated the defrauding or delaying of his Creditors. A Person however may be supposed to foresee and to intend whatever is the necessary Consequence of his own Acts. Had there been Proof of his being pressed by Debts at the Time, I should not have hesitated in saying that he had committed an Act of Bankruptcy."

In Holroyd v. Whitehead, 3 Camp. 530, 2 Rose, 145, the Bankrupt departed from his House, leaving a Letter for his Wife, stating that certain Misconduct of her's had driven him from Home, that she would be turned out by his Creditors, that there would be 20s. in the Pound for them, but that be it more or less he had done with it. Gibbs, C. J. observed, that "this might be considered as amounting to an Act of Bankruptcy, although it arises from domestic Dissentions. He evidently contemplated his Trading as at an End; he had no Intention to return; he left no Directions how the Business was to be carried on in his Absence. It was not enough that he left his Property behind, even if he believed that it would produce 20s. in the Pound to all his Creditors. They had a Right likewise to his Person. Where Creditors have been delayed, the Trader has been held to have committed an Act of Bankruptcy, although that was not his principal Motive, as he must be supposed to foresee and intend the necessary Consequences of his own Act. He left it to the Jury, whether they believed that the Bankrupt left his House to delay his Creditors, and whether they found as a Fact, that a Creditor was thereby delayed, intimating, as his own Opinion, that there was a sufficient Act of Bankruptcy, if he left his House with Intent, &c."

Upon the whole of the Cases, it seems now to be fully settled: 1.—That the Intent to defraud or delay is sufficient to constitute an Act of Bankruptcy, although no Delay actually took place. 2.—That the Fact of Delay is not sufficient, without the Intent. 3.—But that the Intent may be inferred from Acts of which actual Delay to Creditors would be the necessary Consequence and Effect. This last Observation seems only to apply to the Effect of a general delay of Credi-

for Debt, and lie in Prison six (9) Months upon such Arrest or Detention, shall be accounted and adjudged a Bankrupt to all Intents and Purposes. (10).

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tors, and such as is connected with an Embarrassment of Circumstances, and not to that Kind of Delay which may accidentally arise from any Kind of Absence whatsoever

The Intent to delay is applicable only to the Payment of Debts, and does not extend to a Keeping out of the Way to avoid an Attachment for Non-performance of an Award to deliver Goods, Lingood v. Eade, 1 Atk 196

(9) Altered to two by 21 Jac. I c. 19. See Notes, ibid

(10) In several Cases, particularly Alexander v. Vaughan, Cowp. 398, it is taken for granted, that an Act of Bankruptcy must be committed in England In Inglis v Grant, 5 T R. 530, the Question was, whether a fair Assignment of all the Trader's Effects, for the Benefit of his Creditors, executed in India, could be set aside by a subsequent Act of Bankruptcy and Commission in England. Lord Kenyon said, it is too much to contend that such a Commission can have a Retrospect so as to overhaul an Act fairly and honestly done at the Time, by a Person who was not then in a Situation in which the Bankrupt Laws of his Country could have any Operation either upon him or his Property.

In ex parte Mutrie, Scribe went Abroad, before any Debt was due by him and his Partner to the Petitioning Creditor Upon a Communication to him of the insolvent State of the House, he said he should not return This was contended to be an Act of Bankruptcy by absenting himself. The Lord Chancellor, (Loughborough), said, "the difficulty of that Construction is, that I do not know what Date to give to the Act of Bankruptcy. A Man goes out of the Kingdom with a fair Intention and for a proper purpose, then he continues Abroad, after Debts are contracted by his Agent From what Date is he to be considered a Bankrupt? *How will you connect the Act of Bankruptcy with the posterior Debt?*

Mr Christian, in reviewing the Cases upon this Subject, refers to some Opinions of the earlier Writers on the Bankrupt Law, and argues that a native Resident and domiciled Trader, who only goes Abroad for a temporary Purpose, may become a Bankrupt by continuing absent, or by executing a fraudulent Deed Abroad To me it appears, that the Case ex parte Mutrie is a complete and direct Determination to the Contrary His Observation upon that Case is, that it was never once observed that an Act of Bankruptcy must necessarily be committed in England, and that Lord Loughborough's Difficulty seems to exist only in fixing the Date of the Act of Bankruptcy But the Fact of a continuing Absence, after an Intimation of Insolvency, and after the Petitioning Creditor's Debt being due being clear, the Question whether such Continuance Abroad was an Act of Bankruptcy was the very Point in the Case which did not turn as in Questions of Intention, upon any particular Date, and the superseding the Commission was a Determination against the legal Ground-work of such Commission.— The Reference to the Date is only incidental to the general Question, and it seems evidently to be taken for granted by the Lord Chancellor that unless the Act of Bankruptcy consisted in departing the Realm, no such Act was committed

In a late Case, (ex-parte Hague), 1 Rose, 150, the Petition was to supersede a Commission, before any Meeting of the Commissioners had taken place The Bankrupt, who had gone Abroad, wrote to his Correspondents a Letter, intimating, amongst other Things, that he could not come Home, and leave his Goods, more particularly as he was unable to meet his Engagements. It was insisted, that the Act of

1 Jac. I. Cap. 15, A. D. 1604.
The like Commissions, Orders, Benefits and Remedies as be provided for Bankrupts by the Statute of 13 Eliz. c. 7.

III. And be it further enacted by the Authority of this

Bankruptcy must be committed in England, and that the Letter was no Evidence of such an Act. The Lord Chancellor said, it did not appear to him that the Letter was Evidence of an Act of Bankruptcy, though connected with other Circumstances it might be. He directed it to stand over till after the Commissioners had decided, saying, that if this were admitted, a similar Petition would be presented in every Case, to prevent a Person being declared a Bankrupt. This Point of Practice is the only Decision in the Case. Mr. Christian observes, that Lord Eldon must have thought, that the Commissioners might have sufficient Evidence that he absented himself, not that he was a Bankrupt by departing the Realm. The Reporter's marginal Abstract upon this Point is, "though the Act must be committed in this Country, yet a Letter from a Trader, who has gone Abroad in the Course of his Trade, connected with Circumstances *here*, may be sufficient Evidence of such Act."

This shews at least the Impression of the Reporter, with Respect to the View taken by the Lord Chancellor of the Point in Question, although it certainly is not, as it ought to be, a mere Summary of the Report; which I mention, as affording the Opportunity of suggesting to Gentlemen engaged in publishing Reports a particular Attention to their marginal Abstracts, for as Indexes are now a principal Source of legal Information, and are often referred to, without further Enquiry, it is very important, that the Abstracts from which they are formed should not state the Effect of a Case as being more general and comprehensive than the Case itself will warrant. I think it is, however, clear, that the Case affords no Inference for the Conclusion which Mr. Christian deduces from it, and to the most superficial Reader of the modern Chancery Reports, it must be manifest, that if a Doctrine had been intended to have been advanced in Opposition to what had long been understood and acted upon, as a clear and settled Rule of Law, it would not have been left to be picked up by inference, but would have been promulgated in a full and elaborate Judgment.

Subsequently to the Writing of this Note, I find the Nisi Prius Case of Windham v. Fletcher, 1 Starkie, 144, in which a Person who went from England to Ireland with a bona fide Intention to return, went from thence to Paris, from whence he wrote, announcing his solemn Intention never to revisit England, and this was ruled by Lord Ellenborough to be an Act of Bankruptcy under the Words *otherwise absenting himself*. I am not, previous to the committing the Note to the Press, enabled to ascertain whether the Question was afterwards submitted to the solemn Revision of the Court; supposing that not to have been the Case, I cannot but hope that so important a Question will not be considered as concluded by so very summary an Authority. It is always to be regretted when Acts of Legislation are couched in obscure, equivocal Expressions, which is particularly the Case with the Act of Bankruptcy, created by the Words at present under Consideration. *Absenting himself* may consist in positive Acts, such as have been adverted to in Note 4 supra, as by withdrawing from one Place to another, or in the mere Omission, and considering the general Context of the Statute, the former seems to be the true and fair Construction of the Words. The Argument that the earlier Statutes consider the Bankrupt as an Offender or Criminal, is in this Enquiry by no Means immaterial, it being a general Principle, that criminal Legislation applies only to Acts within the Territory where the Power of Legislation is exercised, and the principal modern Statute by no Means weakens the Effect of this Observation, as it certainly is difficult to suppose that a Person, who has ever traded in England, and has left it for the ordinary Purposes of

present Parliament, that the like Commissions, Orders, Benefits and Remedies which are and be provided and limited by the said former Act of Parliament (made in 13 nuper Eliz. Reginæ) against any Bankrupt therein described, or for or concerning his, her, or their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts, or any of them, shall be had, pursued, taken and expounded against such Person and Persons that are herein expressed to be Bankrupts, his, her and their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts, in such like Manner and Form as the same ought or might have been, if the Persons herein described to be Bankrupts had been described to be Bankrupts according to the Intent of the said former Statute.

1 Jac. I. c. 15. A. D. 1603.

IV. And that it shall be lawful for any of the Creditors of the said Bankrupt within four Months after any such Commission shall be sued forth, and until Distribution shall be made by the said Commissioners for the Payment of the Bankrupt's Debts, as in such Case hath been used, to partake and join with the other Creditors that shall sue forth any such Commission, for Satisfaction and Payment of his, her, or their Debts, to him or them owing, without any Hindrance, Let or Disturbance of any of the same Commissioners or of any of the other Creditors of any such Bankrupts, the same Creditors so coming in to contribute (11) to the Charges of the said Commission; and that

Business, shall through the Process of the Bankrupt Law be subjected to capital Punishment, for omitting to return from America or India, upon his Circumstances becoming embarrassed, and that within the limited Time appointed by the Statute for the Purpose. The Improbability of a Prosecution under such Circumstances takes Nothing from the Argument against imputing so absurd a Supposition to the Law. It will hardly be contended, that the Acts of Commission by keeping House, departing from the Dwelling-house, or making a fraudulent Grant, can be considered as applicable to Circumstances occurring in Foreign Countries, and it is difficult to admit that a greater Effect shall by mere Construction and Interpretation Words, which fully admit of a different Application, be applied.

When this important Question comes fairly and properly before a Court, it is much to be hoped that a Doctrine productive of such extensive Consequences, and in Opposition to so many express Authorities, will be fairly met, and not be permitted to depend upon the mere Argument drawn from the conclusive Effect of one or two Opinions, given upon Occasions upon which a full View of the Subject in all its Bearings was by no Means sufficiently presented to the learned and exalted Persons by whom they were pronounced. It is almost impossible to proceed a Step in the Investigation of the Law, without deprecating the Influence of Nisi Prius Authority.

(11.) By 5 Geo. 2, c. 30, sec. 25, the Costs of the Commission shall be paid by the Assignees out of the Bankrupt's Estate, and every Creditor shall be permitted to prove without any Contribution. Mr. Christian observes, that the Effect is ultimately the same, as the Dividend will be so much less; but this Observation is not universally true, as there may be and frequently is a Deficiency of Effects for Pay-

1 Jac. I. Cap. 15. A. D. 1604.

if the Creditors come not in within four Months, then the Commissioners to have Power to distribute.

A Bankrupt conveying his Lands or Goods to others, or transferring his Debts into other Men's Names.

V. Be it further enacted, that if any person which hereafter is or shall be a Bankrupt (12) by Intent of this Statute, shall convey, or procure, or cause (13) to be conveyed, to any of his Children or other Person or Persons, (14) any Manors, Lands, Tenements, Hereditaments, Offices, Fees, Annuities, Leases, Goods, Chattels, (15) or transfer his Debts into other Men's

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ment of the Expences, which, in Case no Contribution can be enforced, must fall upon the Petitioning Creditor or Assignees. "If the Funds out of which the Petitioning Creditor is to be paid should be insufficient, no Provision is made for the Contribution of Creditors, the Petitioning Creditor must pay them himself, per Lord Eldon, ex parte Roscoe, 1 Marivale 190, and see ex-parte Linthwaite, 16 Ves. 234; as to Contribution between Assignees, see Lingard v. Bromley, 1 V. and B. 114. 2 Rose, 118.

(12.) A Conveyance, made previous to the Party being a Trader, is not within the Act, Crisp v. Pratt, Cro. Car. 548, Lilly v. Osborne, 3 P. Wms. 298, Glaister v. Hewer, 8 Vesey, 195.

(13.) The Bankrupt lent to E. P. £80, to renew a Lease (the whole Fine being £160); E. P. gave a Note to repay the Money, unless she left the Estate to one of his Children. She having devised the Estate to the Bankrupt's Daughter, upon a Bill by the Assignees against the Daughter, and the Representatives of E. P. claiming the £80 or half the Estate as being purchased in the Name of a Child, they obtained a Decree at the Rolls, which was affirmed on Appeal, and by Lord Thurlow, C. "it is very clear, that one of the Evils to be remedied by the Statute is that of a Father buying an Estate from a Stranger to be conveyed to his Child. Then if the Case was so varied as to make him a Trustee (suppose for a Moiety) for the Child, that would go to the Assignees. In the present Case, E. P. would not perhaps have given it to the Child, but for the Agreement with the trading Father. If it was Money advanced without a Lien, it might be dangerous to give it to the Assignees, but as far as the Money advanced is a Lien, the Father procured an Interest which must go to the Assignees."—Fryer v. Flood, 1 Bro. Ch. 160.—(Query whether there was any Ground for holding the Engagement a Lien upon the Estate.)

(14.) A Purchase for a Wife is within the Statute, Tucker v. Ash, Styles, 288, Glaister v. Hewer, 8 Ves. 195, 9 Ves. 12, 11 Ves. 377. But so much of the Purchase Money as appeared to be the Property of the Wife in the Hands of an Executor of her Relation, and was laid out upon a joint Security and in a joint Purchase, without ever being in the Husband's Hands disposable by him, was held a Charge for her Benefit on the Estate, S. C.

(15.) In ex-parte Shorland, 7 Ves. 88, Lord Eldon held, that a mere Gift of Money was not within the Act: and the same was ruled in Kensington v. Chantler, 2 M. and S. 36, being an Action against the Son of the Bankrupt, to recover several Sums which had been advanced him by his Father. Lord Ellenborough observed, that the Statute had not the word *Money*, and seemed to be confined to Things which were the Subject of Conveyance, and capable of being conveyed or procured to be conveyed, and that the Doctrine contended for would go the Length of making a Son liable to refund every Portion of Money given to him by his Father for his Maintenance. It is observable, that the whole Tenor of the Clause is applicable to the Case of Specific Property or Debts which the Commissioners are enabled to seize or dispose of, and has no Relation whatever to any personal Demand in Respect of Money or other Property previously disposed of and not capable of being immediately attached under the Commission.

Names; except the same shall be purchased, conveyed or transferred for or upon Marriage of any of his or her Children, both the Parties married being of the Years of Consent, or some valuable Consideration, shall be in the Power and Authority of the Commissioners on this Behalf to be appointed, or the more Part of them, to bargain, sell, grant, convey, demise, or otherwise to dispose thereof, in as ample Manner as if the said Bankrupt had been actually seised or possessed thereof, or the Debts were in his own Name, of the like Estate or Interest to his or their own Use, at such Time as he or she became bankrupt: and that every such Grant, Bargain, Sale, Conveyance and Disposition of the said Commissioners, or of the greater Part of them, shall be good and available to all Intents, Constructions and Purposes in the Law, against the Offender or Offenders, his Heirs, Executors, Administrators and Assigns, and such Children and Persons as shall be subject to this Statute, and against all other Person and Persons claiming by, from or under such Offender or Offenders, or such said other Persons, to whom such Conveyance shall be made by the said Bankrupt, or by his Means or Procurement.

In what Case he that doth withdraw himself shall be proclaimed a Bankrupt.

VI. And for that the Practices of Bankrupts of late are so secret and so subtil, as that they can very hardly be found out or brought to Light; and for that the former Statute, giving Power to the Commissioners to examine others than the Bankrupts, hath not fully or sufficiently authorized them to examine the said Bankrupt upon Oath; for Remedy whereof, be it further enacted by the Authority of this present Parliament, that the said Commissioners may call before them, or the greater Part of them, the said Bankrupt; and if upon lawful Warning left or made in Writing at three several Times at the Dwelling-place or House where the said Bankrupt, his Wife or Family, for the most Part of his Abode, did lodge or remain within one Year next before he, she, or they, became bankrupt, the said Bankrupt shall not appear before the said Commissioners, or the greater Part of them; that then and from thenceforth it shall be lawful for the greater Number of the said Commissioners to appoint to proclaim the said Party a Bankrupt, at such public Place or Places where the said Commissioners, or the greater Part of them shall think meet, warning him, her, or them, to appear before them upon the said Commission at some Time appointed; and that if upon five several Proclamations made in some public Place, the Party offending appear not before the said Commissioners, and yield his, her, or their Bodies to them, or some of them, the said Commissioners, or the greater Part of them, shall or may award a Warrant to such fit Person or Persons as they think meet, to apprehend the Body and Bodies of the said Offender and Offenders, and to bring him, her, or them so offending.

A Bankrupt apprehended, which upon warning refuseth to appear.

Jac. I. Cap. 15. A. D. 1604.

before the said Commissioners, wheresoever the said Party or Parties offending may be found, in Place privileged or not, to be examined by the said Commissioners, or the greater Part of them.

The Examination of a Bankrupt.

VII. And that it shall be lawful for the said Commissioners, or the greater Part of them, to examine the said Offender or Offenders, upon such Interrogatories touching the Lands, Tenements, Goods, Chattels, Debts, Bills, Bonds, Books of Account, and such other Things, as may tend to disclose his, her, or their Estate, or their secret Grants, Conveyances, and eloining of his, her, or their Lands, Tenements, Goods, Money, and Debts, as they shall think meet.

A Bankrupt refusing to Answer.

VIII. And that, if therein the Offender or Offenders shall refuse to be examined or to answer fully to every Interrogatory to him to be ministered by the said Commissioners, or the greater Part of them, it shall be lawful for the said Commissioners, or the greater Part of them, to commit the said Offender or Offenders to some strait or close Imprisonment, there to remain until he, she, or they shall better conform him or herself.

The Punishment of a Bankrupt committing Perjury.

IX. And that if upon his, her, or their Examination, it shall appear that he, she, or they have committed any wilful or corrupt Perjury, tending to the Hurt or Damage of the Creditors of the said Bankrupt, to the Value of ten Pounds of lawful Money of *England*, or above, the Party so offending shall or may thereof be indicted in any of the King's Majesty's Courts of Record, and being lawfully convicted thereof shall stand upon the Pillory in some public Place by the Space of two Hours, and have one of his Ears nailed to the Pillory and cut off.

X. And whereas by the former Statute made in the said thirteenth Year of the Reign of the late Queen *Elizabeth*, the Commissioners for Bankrupts have Power given to them to send for such Person or Persons as the Creditors shall know, suppose or suspect to have, detain or keep any Part of the Money, Goods, Chattels, or Debts of the said Offender or Offenders, or to be indebted to the said Offender or Offenders, to be examined by the said Commissioners, as by the same Statute appeareth, but have not good Means or Remedy by Imprisonment or other Penalty, to procure the Person so sent for by them to appear before them, nor having appeared before them, to make Answer upon his Oath to such Interrogatories as shall be ministred unto him by the said Commissioners, for and upon the Specialty, Certainty, true Declaration and Knowledge of such Lands, Tenements, Hereditaments, Goods, Debts, or other Things, of any such Offender or Offenders, as be or shall be, or which shall be suspected to be, in his Custody, Use, or Possession, or in the Custody, Use, or Possession, of any other to his Knowledge, and of all Debts owing to or for the Benefit of such [illegible]der or Offenders, by himself or by any other to his

knowledge; so as many Times a great Part of the Offender or Offenders' Lands, Tenements, Hereditaments, Goods, Chattels, or Debts, which, by the true Intent of the said Statute, should be employed to the Satisfaction of the Creditors of the Offender or Offenders, are concealed or detained in the Hands of such Person and Persons as refuse to come, or being come refuse to be sworn before the said Commissioners, to be examined in that Behalf, to the great Encouragement of all Bankrupts and their wicked Confederates and Accessories, and to the great Hindrance of the just Remedies of the Creditors of the said Bankrupts, for their true and just Debts to them owing: for Remedy whereof, be it further enacted by the Authority aforesaid, that if any Person or Persons being known, supposed or suspected to have or detain any Part of the Lands, Tenements, or Hereditaments, Goods, Chattels, or Debts of the said Bankrupt, or to be indebted to or for the Benefit of the said Bankrupt, shall, after lawful Warning to the said Person or Persons given, to come before the said Commissioners or the greater Part of them, to be examined according to the Intent of the said Statute, refuse to come, or shall not come before the said Commissioners at the Time appointed, having no lawful Impediment, (16) (such as shall be admitted and allowed of by the said Commissioners, or the more Part of them, and which shall be then signified or made known to the said Com-

Examination of such as have Bankrupt's Goods, or be indebted unto them.

The Punishment of such as will not appear, or not swear to answer to Interrogatories.

(16.) In an Action of false Imprisonment by a Person summoned to attend at a distant Place, it appeared, that after being summoned to attend, he called repeatedly on the Agents to whom the Summons had been sent, to be served, and expressed great Anxiety to attend, but stated that he had no Means to defray his travelling Expences, and offered to go, if they would give him sufficient Money to carry him. They refused to give him any Money, saying their Orders were to give him none. The Bankrupt wrote a Letter, which was communicated to the Commissioners, stating that he could not obtain Money even to pay his Coach Fare, and was obliged much against his Will not to obey their Summons. A Verdict was found for the Plaintiff, subject to the Opinion of the Court on different Questions, and inter alia, whether there was a sufficient Impediment within the Act, upon which it was said, per Curiam, "if he had had no Money to convey himself to L. that might have been a lawful Impediment within the Statute, but it lay on the Plaintiff to shew an Excuse for his Non-attendance. Nothing of this Sort, however, appears on the Case; it is only stated that he said that he had no Means of defraying his travelling Expences; but it is not stated as a Fact that he had none," and a Nonsuit was entered. Battye v. Gresley, 8 E. 319. I have always looked upon this Judgment with great Dissatisfaction. At the Trial of the Case, at which I was present, but without being any way connected with the Cause, it was manifest to every Body that the Plaintiff had in his whole Conduct shewn a real and bona fide Intention to attend, according to the Summons; and if the Conduct stated on the Face of the Case was not a sufficient Indication of such Intention to be admitted as conclusive by the Court, I conceive that it was at least sufficient to require the Case to be referred back to the Jury, in order to find the Fact one Way or the other. It will hardly be contended, that the Conduct and Declarations

1 Jac. I. Cap. 15, A. D. 1604.

missioners at the Time of their Assembly;) or that any such Person or Persons, having Knowledge or Warning of any other Assembly or Meeting of the said Commissioners again, shall not come and appear before them at such Time as he or she lawfully may come, having no such lawful Impediment as shall be then made known to the said Commissioners, and by them admitted and allowed of, as aforesaid; or being come before them shall refuse to be sworn, and to make answer to such Interrogatories as shall be ministred unto him or them, according to the true Intent and Meaning of the said Statute made in the said thirteenth Year of the Reign of our said late Sovereign Lady Queen *Elizabeth*, or of this present Act, (17) that

of the Plaintiff at the Time were not admissible Evidence, and it would be mere trifling to admit that the Want of Means of travelling was a lawful Impediment, but that the existence of such Impediment could only be proved by positive and direct Evidence, as it is a Fact which in its Nature must be absolutely incapable of such Proof, and upon which a Judgment could not by any Possibility be formed, in Favour of the Plaintiff, upon any other Ground than a fair review of the general Tenor of his Conduct on the Occasion.

This Provision, which requires a Person at a Minute's Notice to attend at his own Expence a Meeting at the most remote Part of the Kingdom, may be often attended with great Hardship, and is very susceptible of Abuse. It is a Subject upon which, amongst many others in the Bankrupt Laws, it would be very desirable to apply a legislative Remedy for the Inconvenience which may arise, and especially to provide, that no Person should be compelled to attend upon a Summons without a definite Period of Notice, or to travel above a certain Distance without a previous Provision for his expence, or possibly in all Cases where the Distance exceeded twenty Miles it might be more desirable to provide that a Commissioner should be specially appointed to take the requisite Examination. In the expired Statute 4 and 5 Anne, c. 17, sec. 3, a Provision was contained to examine any Persons as Witnesses concerning the Bankrupts' Estate or any Act of Bankruptcy, the compulsory Provisions whereof only attached in Case of the Party neglecting to attend upon Payment or Tender of his reasonable Charges, and it was provided that no Person should be obliged to travel above twenty Miles in order to be examined.

(17.) The Assignees, as well as the Party under Examination, are usually permitted to have the Assistance of Counsel and Attornies, but it is discretionary in the Commissioners, and the Lord Chancellor will not make an Order for the Purpose, ex-parte Parsons, 1 Atk. 204, ex-parte Bland, 1 Atk. 205; nor will a Motion be allowed for the Party to have a Copy of the Examination, in order to assist him in his Answer to a Bill of Discovery, Roden v. Dellow, 1 Atk. 289. Lord Hardwicke, ex-parte Meymot, 1 Atk. 199, said, "if a Bankrupt has an Objection to a Question, he must demur, and the Lord Chancellor will judge of the Question upon a Petition." But it is now established, that the Lord Chancellor will not decide upon a Commitment of a Bankrupt upon Petition, and that there must be a Habeas Corpus, and the same Rule would apply to the Examination of any other Person, and the only Way of bringing the Judgment of the Commissioners to the Test is by Commitment and Habeas Corpus or Action. The Law upon this Subject seems to require Revision, see Let. Rom. sect. 16.

In Trover, the Defendant was charged with his Confession, in a Deposition taken before Commissioners, and Lord Raymond refused

greater Part of them, to commit to such Ward and Prison, as

1 Jac. I. Cap. 15. A. D. 1604.

to let him into any Parol Evidence to explain it, Wilson v. Poulter, 2 Str. 794. I cannot by any Means assent to the Justice of this Decision, or think that a Declaration, taken upon such Examination, may not in Principle be shewn by extrinsic Evidence to be founded in Mistake, or to be fairly capable of a different Exposition, any more than in any other Case, in which the Declaration or Admission of a Party is in general only prima facie Evidence against him, and does not prevent the Truth of the Case from being shewn by other Evidence. The Circumstances under which Examinations in Bankruptcy are often taken are very likely to produce Embarrassment and Incorrectness in the Answers. Although a Party is not bound to answer what may subject him to Penalties, if a Person acknowledges that he has received the Bankrupt's Money, for which he is prima facie liable, if he says I cannot account for it but by confessing myself subject to Penalties, he ought to be liable, as he admits that it is still in his Hand, ex-parte Symes, 11 Ves. 521.

A Party is not allowed to decline Examination upon the Ground of his being a Purchaser for valuable Consideration, without Notice, see ex-parte Herbert, 13 Ves. 183.

Mr. Christian observes, vol. 1, 191, that it frequently happens, that the Party or his Counsel wish to introduce into the Deposition some Narrative not connected with the Answer to any Question, but is intended to destroy the Effect of the Answers, when they are read together to a Jury; this, as a Commissioner he had constantly opposed, as the Statute only empowers Commissioners to take *a full Answer to all such Questions as shall be* put to the Witness; and to insert more in the Deposition, was, in his Opinion, an Abuse of the Authority of the Commissioners, and a Perversion of the Evidence which they are authorized to obtain. But he is obliged to say this upon his own Authority only, upon a Subject which frequently occurs in Practice.

Upon this Point, I entertain a very different Impression, so far as relates to any Explanation which may be offered relative to the Subject Matter of the Enquiry, as it is not the Province of the Commissioners, by catching Questions, either of their own or of the professional Persons employed, to be allowed a Party to be entrapped into an imperfect and partial Admission, but to assist in the fair Elucidation of the Truth between the Bankrupts' Estate and the Person under Examination, and whatever Explanation is offered should in Fairness and Justice be considered as Part of the Answer, the Relevancy and Propriety of which may be afterwards duly considered by the Court in which the Examination is produced. Mr. C. adds, that the Commissioners ought to permit no Question to be put to which they cannot compel an Answer, and mentions an Instance in which the Object of the Enquiry was not to discover the Bankrupts' Property, but to assist one Creditor against another, and which was very properly refused to be put. I conceive it is right upon all Occasions when the Commissioners allow the Examination to be conducted by professional Persons, that they should themselves be distinctly satisfied as to the Nature and Object of the Enquiry being such as are contemplated in giving them the Authority of Examination, as Attempts are not unfrequently made to substitute Examinations in Bankruptcy for Bills of Discovery, in Cases wholly unconnected with the general Interest of the Creditors, and intended only for some collateral Purpose more particularly for the Purpose of rendering the Party under Examination responsible as a Partner. In a late Case, it was held, that although a Person has been improperly examined before Commissioners of Bankrupt, upon a Subject unconnected with the Interest of the Bankrupts' Estate, with a View to procure Evi-

1 Jac. I. Cap. 15. A. D. 1604.

to them, or to the greater Part of them, shall be thought meet all such Person and Persons as shall so refuse to be sworn, and then it shall be lawful for the said Commissioners, or for the make answer to such Interrogatories as shall be so ministred as aforesaid, and also to direct their Warrants (18) to such Person or Persons as to them, or the greater Part of them, shall be thought meet, to apprehend and arrest such Person or Persons as shall refuse to come and appear before them, as aforesaid, and to bring him, her, or them, before the said Commissioners, or the greater Part of them, to be examined as abovesaid, and upon his, her, or their Refusal to come, or to be examined before the said Commissioners, as aforesaid, to commit the said Party so refusing, to such Prison as the said Commissioners, or the greater Part of them, shall think meet, there to remain without Bail or Mainprize, until such Time as the said Person so refusing to come, or to be sworn to answer before the said Commissioners, shall submit him or herself to the said Commissioners, and be by them examined, according to the true Intent of the said Statute and of this present Act.

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dence in an Action depending against him, the Examination may be used as Evidence by the Plaintiff, at the Trial of the Action, and that the Judge at Nisi Prius cannot inquire into the Abuse of the Authority of the Great Seal, by which the Examination was obtained. The Remedy of a Party so improperly examined is by an Application to the Lord Chancellor, to have the Examination taken off the file and cancelled, Stockfleth, v. De Tastet, 4 Camp. 10.

Altercations not unfrequently arise as to the proper Manner of expressing the Language of the Deposition in the third Person, but wherever there is any Doubt on this Point, I think it is extremely desirable that the precise Language of the Question and Answer should appear verbatim upon the Proceedings, as there is often very material Difference between the Impression made by the Narrative of a Party, in his own spontaneous Language, and a mere Answer in the Affirmative or Negative to an artful or complicated Question. Framing of a Question in such Terms as may entangle the Party examined by his Answer is one of the most frequent Artifices of professional Chicane, and the Power of correcting the Account which is taken down is often an insufficient Security, where although a Party may see that the Manner in which the Narrative is dressed up does not fairly accord with the Representation intended to be made, he does not feel himself competent from the embarrassed Situation in which he is placed, upon a bullying and browbeating Inquiry, to state with sufficient Distinctness the proper Manner of correcting it. See further as to the Power of Examination, 5th Geo. 2d. 30. sect. 16, post and notes.

(18) A second Summons is not necessary previous to issuing the Warrant. Battye v. Gresley, ub. supra. In the same Case Lord Ellenborough said with Reference to the Objection that the Commissioners were not together when the Warrant was signed. "The Commissioners I admit ought to hold Counsel together and agree upon the Substance of the Warrant whether it shall issue for the Arrest of the Party, but here I consider that they had exercised together every material Act of Judgment including the Direction of the Warrant We must consider that in directing the Warrant to be made out, they gave their Officer every necessary Direction for that Purpose including the

XI. Provided always, that such Witnesses as shall so be sent for, (19) shall have such Costs and Charges as the Commissioners in their Discretion shall think fit; the same Charges to be rateably borne by the Creditors of the said Bankrupt, according to the Proportion of each of their several Debts: and if any Person or Persons, other than the Bankrupt, either by Subordination, unlawful Procurement, sinister Persuasion, or Means of any others, or by his own Act, Consent, or Agreement, shall wilfully and corruptly commit any Manner of wilful Perjury by his Deposition to be taken before the said Commissioners, or the greater Part of them, as aforesaid, that then the Party or Parties so offending, and all and every Person and Persons that shall unlawfully and corruptly procure any such unlawful, wilful, and corrupt Perjury, shall or may therefore be indicted in any of the King's Majesty's Courts of Record, and after his or their Conviction thereof, shall incur such Forfeiture, and receive and suffer such Pains and Punishment, as are limited by the Statute made concerning Perjury in the fifth Year of the Reign of our late Sovereign Lady Queen Elizabeth.

1 Jac. I. Cap. 15. s. 11. 1604. Witnesses allowed their Costs.

The Penalty of others beside the Bankrupt committing Perjury.

XII. And be it further enacted, that all and every Sum and Sums of Money which shall be forfeited by Force of this present Act, shall be sued for and recovered by the said Creditors only, or any of them that will sue for the same, by Action of

Who shall recover the Forfeitures, and how they shall employ them.

Persons Names to whom the Warrant was directed, so that when it came before them for their Signatures, nothing else could remain to be done, except the mere Act of Signing it." But upon the Statement of the Case there does not appear to be any more positive Ground for drawing this Conclusion as to the Directions which had been given, than for the Inference that the Plaintiff's Non-attendance was occasioned by the real and bonâ fide Impediment of Want of Means to travel.

(19). It was ruled, in Battye v. Gresley, (See Notes to the preceding Section), that the Tender of Expences is not a Condition precedent to the Issuing of the Warrant. Perhaps the opposite Construction would be more conformable to the Language of the Act, that the Costs and Charges should be tendered to the Witnesses sent for. Mr. Christian observes, that "if it was properly made known to the Commissioners that Want of Money was the Cause of the Non-Attendance of the Witness, they ought, he conceives, to consider it as a lawful Impediment; but if they are not duly certified of that Fact, their Warrant to apprehend the Witness, and bring him before them, is legal." But the Case of Battye v. Gresley will hardly admit of this modification, as the Commissioners were fully apprized in that Case of the Reason alleged for Non-Attendance. In ex-parte Benson, 2 Rose, 75, Lord Eldon also intimated, that a Person summoned could not refuse to come till his Expences were paid; and in ex-parte Roscoe, 1 Marisale, 188, it was ruled, that he was not entitled to have his Expences paid or ascertained till he had finished his Examination; and see the Observations in that Case as to the Difficulty of obtaining the Expences when ascertained. From the Course which Cases have taken taken, it is very important that Commissioners, in summoning a Party from a Distance, should exercise a Judgment as to the Propriety of such Summons, and not sign it upon being presented as a mere Matter of Course.

1 Jac. I. Cap. 15. A. D. 1604.

Debt, Bill, Plaint, or Information, in any of the King's Majesty's Courts of Record; and the Sum or Sums of Money so recovered, the Charges of Suit being deducted, shall be distributed and divided towards the Payment of the said Creditors of the Bankrupt.

The Authority of Commissioners touching Debts due to a Bankrupt.

XIII. And for that the Power and Authority given to the Commissioners of Bankrupts touching the Debts due to the said Bankrupts, is not so full and perfect, as that the full Benefit thereof in due Course might be employed to the Use of the said Creditors, as was intended: for Remedy thereof, be it further enacted by the Authority aforesaid, that the Commissioners of Bankrupts, or the greater Part of them, shall have Power to grant and assign, or otherwise to order and dispose all or any of the Debts due or to be due to or for the Benefit of the said Bankrupt, by what Person or Persons soever, or in what Manner and Form soever, to the Use of the Creditors of the said Bankrupt, according to the true Intent of the said former recited Statute of Bankrupts; and that the same Grant, Assignment, or Disposition of the said Debts, in Form aforesaid to be made by the said Commissioners, or the greater Part of them, shall so vest the Property, Right, and Interest of the said Debt and Debts, in the Person or Persons of him, her, or them, to whom it shall be granted, assigned, or ordered by the said Commissioners, or the greater Part of them, as fully to all Intents and Purposes as if the said Bill, Bond, Bonds, Statutes, Recognizances, Judgment, or Contract, whereupon the said Debt or Debts, Deed or Deeds shall arise or grow, had been made to or with, or for the said Person or Persons to whom the same shall be so granted, assigned, or disposed by the said Commissioners; and that after such Grant, Assignment, or Disposition made of the said Debts, that neither the Bankrupt, nor any other to whom any such Debt shall be due, shall have Power to recover the same, nor to make any Release or Discharge thereof: neither shall the same be attached as the Debt of the Bankrupt, or such said other Person or Persons to whom the same shall be due, by any other Person or Persons, according to the Custom of the City of London or otherwise, but that the Party or Parties to whom the same Debt shall be so assigned, shall have like Remedy to recover the same, as fully and lawfully, in the Name or Names of the Person or Persons to whom the same shall be so granted, assigned, or ordered, by the said Commissioners, in all Respects and Purposes as the Party himself might have had; any Law, Statute, Use or Custom to the Contrary thereof in any wise notwithstanding.

The Remedy for the Creditor to recover a Bankrupt's Debt assigned to him by the Commissioners.

XIV. Provided always, that no Debtor of the Bankrupt be hereby endangered for the Payment of his or her Debt truly

and *bona fide* to any such Bankrupt; before such Time as he shall understand or know that he is become a Bankrupt. (20)

1 Jac. I. Cap. 15. A. D. 1604.

XV. Provided also, and be it further enacted, that such of the said Commissioners as shall put the said Commission in Execution, shall, upon lawful Request to them made by the said

Commissioners shall declare to the Bankrupt how they have bestowed his Lands and Goods.

(20). This is the first Relaxation of the Hardship of the Law with Regard to the Relation to Acts of Bankruptcy, and the Debtor of the Bankrupt is protected by Payment after such Act of Bankruptcy, provided it is without Notice. The Law, however, with Respect to this Subject, is still severe, as applicable to a Payment with Notice, for if a Debt is paid after an Act of Bankruptcy, of which the Debtor has Notice, as by a Banker paying the Drafts of his Customer, Vernon v. Hankey, 2 T. R. 113, 3 Bro. 313; even after an Arrest, upon which there is a subsequent Imprisonment of two Months, King v. Leith, 2 T. R. 141; it must be paid a second Time, in Case of a Commission issuing, while, on the other Hand, the Debtor has no Defence against the Bankrupt, previous to the actual Issuing of the Commission, Foster v. Allanson, 2 T. R. 479. In that Case, Ashurst, J. said, "where a Person pays voluntarily with Notice of the Bankruptcy, there the Rule holds, but not where he pays by the Coercion and Judgment of a Court, of Law. If indeed it were by Collusion, that might alter the Case." So Buller, J. "the Assignees can only recover where the Payment has been voluntary. If indeed there were any Fraud, by the Defendant's colluding with the Bankrupt in suffering a Judgment to be recovered against him, that would be a different Case; but there is no Fraud in this Case—the Defendant has no legal Defence;" and see Franklin v. Lord Brownlow, 14 Vesey, 557. It is impossible to conceive a greater Anomaly or Absurdity than the Law in this Respect exhibits. In every other Case, an Action, founded upon Contract, supposes the actual Breach of a previous Obligation, which it was incumbent on the Defendant to perform, but in this Case the Action itself is rendered necessary, in Order to render the Party secure in the Performance of his Duty, and from the Expressions which are thrown out, it would seem not sufficient for the Defendant to express his Readiness to make the Payment demanded, but to require that for his Indemnity an Action should be prosecuted to Judgment. A payment, before Judgment would be treated as collusive, and perhaps a Judgment by Default or Confession would not be regarded in a much more favourable Light, and thus a Party, perfectly willing to perform an Engagement which can be legally enforced, is, without any Default of his own, and from collateral Circumstances which he has nothing to do with, subjected to the Expence and Inconvenience of a legal Process, attended possibly with Arrest and Imprisonment, before he can satisfy with Safety the Claims which he is totally unable to resist. In common Cases of conflicting Claims, a Person, who is willing to satisfy his Obligation according to the Right, may be released from becoming a Party to the Contest in which he has no Concern, by Means of a Bill of Interpleader, but in the Case under Consideration there can be no such Assistance, for the Claim is all on one Side, and there is no Competitor, who can be brought before the Court. In Order to apply the proper Remedy to such a defective State of the Law, it would be requisite that all Payments, although after Knowledge of an Act of Bankruptcy committed, should be protected until a Commission has actually issued, or at the utmost that there should be such Protection, unless the Commission should be taken out within so short a Period after the Act as to prevent a mere Race between the Commission and the Payment; see Let. Rom. and see ante No. 2, Note 5, Sec. 27.

1 Jac. I. Cap. 15. A. D. 1604.

Bankrupt, not only make a true Declaration to the said Bankrupts, of the employing and bestowing of his, her, or their said Lands, Tenements, and Hereditaments, Offices, Fees, Goods, Wares, Money, Chattels, and Debts, which shall be paid and satisfied to their said Creditors, as is in like Case limited or appointed by the said former Statute made in the said thirteenth Year of the said late Queen's Majesty's Reign, but also make Payment of the Overplus of the same, if any such shall be, to the said Bankrupts, their Executors, Administrators and Assigns; and that the said Bankrupts, after the full Satisfaction of the said Creditors, shall have full Power and Authority to recover and receive the Residue and Remainder of the Debts to them owing; (21) any thing in this Act contained to the Contrary in any wise notwithstanding.

The Commissioners' Plea in an Action brought against them.

XVI. Be it further enacted, that if any Action of Trespass or other Suit shall happen hereafter to be brought against any Commission authorized by the Statute made in decimo tertio of our late Sovereign Lady Queen Elizabeth, for Bankrupts, or any other Person or Persons having Authority by Virtue or under the Commission authorizing the said Commissioner for the doing or executing of any Matter by Force of the said Statute, or this present Statute, that the Defendant or Defendants in any such Action or Suit, may plead not guilty, or otherwise justify, that the Act or Thing whereof the Plaintiff or Plaintiffs complained, was done by the Authority of the said Act made in the thirteenth of Elizabeth, or in this present Act respectively, without expressing or Rehearsal of any other Matter or Circumstance contained in either of the said Acts, and without enforcing him or them to shew forth their Commission authorizing the said Act or Thing; whereunto the Plaintiff shall be admitted to reply, that the Defendant did the said Fact supposed in the Declaration, of his own Wrong, without any such Cause alleged by the said Defendant; whereupon the Issue in such Action shall be joined to be tried by Verdict of twelve Men; and upon the Trial of that Issue, the whole Matter to be given on both Parties in Evidence, according to the very Truth of the same; and if Verdict upon such Issue shall pass for the Defendant, the Defendant to have his Costs. (22)

The Commissioners shall proceed to Execution though the Bankrupt die.

XVII. Provided always, and be it further enacted, that after any Commission of Bankrupts hereafter sued forth, and dealt in (23) by the Commissioners, the Offender happen to die be-

(21). Sec. 13. El. C. 7, Sec 4, and Notes.

(22). This does not extend to Trespass for breaking Doors, under the Authority of 21 Jac. I. sec. 8.—Goodinge, H. L. 174.

(23). In Warrington v. Norton, For. 134, Lord Talbot declared, that whatever was done in Pursuance of the Commission was a Dealing in it if never so minute. But in ex-parte Beale, 2 V. and B. 29, 2 Rose, 140, the Lord Chancellor said, he conceived that the Commissioners could not proceed unless the Party had been declared a Bankrupt.

fore the Commissioners shall distribute the Goods, Lands, and Debts of the Offenders, or any of them, by Force of the aforesaid Statute of the thirteenth Year of the Reign of our late Sovereign Lady Queen Elizabeth, and this Statute, or either of them, that then nevertheless the said Commissioners shall and may in that Case proceed in Execution, in and upon the said Commission for and concerning the Offender's Goods, Lands, Tenements, Hereditaments, and Debts, in such Sort as they might have done if the Party Offender were living.

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21 Jac. I. c. XIX. A. D. 1623.—An Act for the further Description of a Bankrupt, and Relief of Creditors against such as shall become Bankrupts, and for inflicting corporal Punishment upon the Bankrupts in some special Cases.

Laws made against Bankrupts shall be beneficially construed for the Creditors.

FORASMUCH as daily Experience sheweth, that the Number and Multitude of Bankrupts do increase more and more, and also the Frauds and Deceits invented and practised for the avoiding and eluding the Penalties of the good Laws in that Behalf already made, and the Remedy by them provided: and for that divers Defects are daily found in the former Statutes made against Bankrupts, both in the Description of a Bankrupt, as also in the Power given to the Commissioners for the Discovery and Distributing the Bankrupt's Estate, to the great Encouragement of evil-minded Persons, the Hindrance of Traffic and Commerce, the great Decay, Overthrow, and Undoing of many Clothiers, by whom many thousands of the natural-born Subjects of this Realm be from Time to Time in all Parts of this Kingdom set on Work: all which do tend to the general Hurt of this Realm; for Remedy whereof, be it enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, that all and singular the aforesaid Statutes and Laws heretofore made against Bankrupts, and for Relief of Creditors, shall be in all Things largely and beneficially construed and expounded for the Aid, Help, and Relief of the Creditors of such Person or Persons as already be or hereafter shall become Bankrupt.

Who shall be deemed a Bankrupt.

II. And that all and every Person or Persons, using or that shall use the Trade of Merchandize, by way of Bargaining, Exchange, Bartering, Chevizance or otherwise, in gross or by retail; or seeking his or her Living by buying and selling; (1)

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(1.) This Description is copied, with a very slight verbal Difference from Statutes 13 Eliz and 1 Jas. I. c. 15, and constitutes the general Rule as to Persons who shall be deemed Traders within the Bankrupt Law. The 21 and 7 Geo. 2 c. 30 has added Bankers, Bro-

21 Jac. I. Cap. 19. A. D. 1623. or that shall use the Trade or Profession of a Scrivener; (2) re-

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kers, and Factors. The same Statute contains a Declaration, that no Farmer, Grazier, or Drover of Cattle, or Receiver General of Taxes shall as such be subject to the Bankrupt Law. Reserving any References to these particular Cases for the Enactments upon which they particularly depend, the present Note is intended chiefly to apply to the general Description of Persons as Traders seeking their Trade or Living, or as it is expressed in 1 Jas. I. their Trade of Living by buying and selling.

In another Place (Let. Rom. § 3.) I have endeavoured to shew that the Description of Persons liable to be affected by the Bankrupt Law is more circumscribed than public Convenience in the present State of Commercial Credit would require, and have pointed out the more extended Description of Traders who are within the Operation of the Bankrupt Law in Scotland.

After premising in general, that all Persons are subject to the Bankrupt Law who have traded in or *to* England, although residing elsewhere, Alexander v. Vaughan, Cowp. 398, Williams v. Nuan, 1 Taunt. 270, (which was the Case of a Partner residing in Dublin, there being another who resided and purchased Goods in England), I shall endeavour to collect the Law under the following Heads. I.—The Nature and Subject of the Trading. II.—The Quantity and Degree of Trading. III. Matters relating to the Person of the Trader, independently of the Nature of the Trade. IV.—Of the Continuance or Discontinuance of Trading.

I.- The general Description of a Trader, as already referred to, is that of a Person seeking his Living by buying and selling. Several of the early Cases upon this Subject arose in Actions of Slander, for calling a Person a Bankrupt, and the Decisions in some of those Cases, which, upon Examination, appear to turn upon particular Circumstances, have been handed down as general Authority, as particularly in the Case of Dyers, which will be mentioned presently.

A Person is not a Trader in Respect of the Disposition of the Profits or Substance of Land, as the Lessee of an Allum Mine, buying Kelp and Urine to make the Rock into Allum. Newton v. Newton, Cooke's Bkt. Law, 64; an Iron Master preparing the Produce for Market, Watkins v. Caddell, Co. B. L. 45; the Lessee of a Coal Mine, Port v. Turton, 2 Wils. 169; a Farmer having a Lime Kiln, which he works as a Lime Burner, ex-parte Ridge, 1 Rose, 316; a Person selling Stones delved from his own Quarry, ex-parte Gardner, 1 Rose, 377.

With Respect to Brick-making, the Cases are attended with some Confusion. In ex-parte Harrison, 1 Bro. c. c. 174, a Farmer having made Bricks of Earth taken from the Waste without Licence from the Lord, and for which he afterwards paid a Consideration, was held a Trader, it being found by the Jury, that he kept a public Sale Kiln. Mr. Christian truly observes, that the Buying and Trade of Merchandize required by the Statute are entirely suppressed. In Parker v. Wells, 1 Bro. C. C. 178, 1 T. R. 34, Cooke's Bkt. Laws, 41, the Lessee of a Farm made Bricks of the Clay dug upon the Estate, and by the Purchase of the necessary Sand and Fuel. Lord Loughborough, in an elaborate Judgment, decided that this was not a Trading within the Bankrupt Law. The Judgment was reversed in the King's Bench, Lord Mansfield and the Court having holden, that a Lessee was a Purchaser of the Brick Earth. In the House of Lords, a *Venire de novo* was awarded to ascertain the Facts, and no final Judgment was ever pronounced upon the Law. Mr. Christian, in his Notes on 5 Geo. 2d. c. 30, makes several judicious Observations to shew that this is not a Trading, and the Holding it to be so seems irreconcilable with the

ceiving other Men's Monies or Estates into his Trust or Cus- 21 Jac. I. Cap. 19. A. D. 1623.

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general Principles of the Subject, and the Current of decided Cases upon other Subjects. In Sutton v. Weeley, 7 East, 442, it was ruled, that the Devisee of an Estate, making Bricks upon it to a great Extent for Sale, was not a Trader. Lord Ellenborough observed, "that the Selling the Soil in a State essentially altered by various Processes of Manufacture had been holden not to convert the Land Owner into a Person who can be properly said to carry on *the Trade of Merchandize.* Those Words cannot be satisfied without both a *Buying and Selling.* But he who burns the Clay of his own Land into Bricks, and sells them is no Buyer to sell again. Lord Ellenborough further observed, that the Case differed from former Decisions, inasmuch as in those the Earth employed was acquired for that very Purpose; and it was not necessary to say what would be the Opinion of the Court if a Case similarly circumstanced should come before them." The Case therefore is no absolute Decision as to the general Nature of the Trade, but it is evidently impossible with any Propriety of Language to apply the Term *Buying* to the Facts upon which the several Cases arose, see ex-parte Gallimore, 2 Rose, 42.

It would seem clear, that a Person, buying Articles which are mixed with others produced on his own Land to form an Article of Sale, as a Brewer growing the Malt and buying the Hops, a Gunpowder Manufacturer buying the Saltpetre and raising the Charcoal, is a sufficient Trading, see Christian ibid.

In Williams v. Stevens, 2 Camp. 300, Lord Ellenborough said, "a Building on a Man's own Land, for whatever Purpose, could not be considered a Buying and Selling." It is said by Mr. Christian, that if a Carpenter, Bricklayer, Painter, &c. is employed in the Building or Finishing of Houses, and he charges for his Materials, he is a Trader; he sells his Articles whilst they are Merchandize, and it is immaterial to what Purposes they are applied. If there is any established Practice upon this Subject, it perhaps ought not to be disturbed, but I cannot think that in Principle such an Application of the Materials can properly be called a Selling, and I have in my own Practice acted upon the opposite Opinion.

A Manufacturer, who buys Materials which are afterwards sold in a different State, (or a Person whose Living is substantially gotten by mechanical Labour, with a Mixture of Buying and Selling), as a Butcher, is a Trader, Dally v. Smith, 4 Burr. 2148; so a Shoemaker buying Leather and selling it again in Shoes, Crumpe v. Barne, Cro. Car. 31.

In Crisp v. Pratt, Cro. Car. 549, it was ruled, that an Innkeeper was not a Trader, for his Gain is not only by the Uttering of his Commodities, but for the Attendance of his Servants, his Furniture, &c. It is very difficult upon Principle to reconcile this with Cases where a great Part of the Value of the Commodity sold arises from Work performed upon the Article bought, but the Law is settled. Where the Innkeeper sells Wines, &c. to be consumed out of his House, it is equally settled that he is a Trader.

A Bleacher, who prepares Materials used in discharging the earthly Particles from the Cloth, is not a Trader. The Case of a Dyer, whose Drugs are mixed with the Cloth, is a disputed Question. In Squire v. Johns, Cro. Jas. 585, from which all the Text Law upon the Subject is derived, there was an express Averment of the Party buying and selling, which was the Ground of the Decision. I conceive that a Dyer has never been directly held to be a Trader upon the mere Exercise of that Trade, and I have seen a very confident Opinion to the same Effect, by one of the ablest Writers on the Bankrupt Law.

21 Jac. I. Cap. 19. A. D. 1623.

tody; who at any Time after the end of this present Session of

A Person cannot be made Bankrupt as an Underwriter, ex-parte Bell, 15 Ves. 355, as Part Owner of a Ship, Newton v. Trigg, 3 Mod. 327, ex-parte Bowes, 4 Ves. 168; the Member of a Trading Corporation, Dictum ex-parte Bell. In ex-parte Collins, 2 Rose, 373, in which an Issue was directed to try the Trading, Lord Eldon said, he should have great Difficulty in making out that a Scavenger, contracting with the Parish for removing the Dust, &c. was within the Bankrupt Laws. The Bankrupt was described as a Buyer and Seller of Dust, Breeze, and Ashes.

III. There has been some Discussion as to how far the Drawing and Re-Drawing of Bills of Exchange shall be deemed a Trading. In Richardson v. Bradshaw, 1 Atk. 129, two Army Agents, the one resident in London, the other in Dublin, drew upon certain others for large Sums of Money, but there was no Commission Money allowed on either Side. Several Merchants gave Evidence of Opinion, that this amounted to Trading; the Jury asked Lee, C. J. whether such Drawing and Re-Drawing were in Point of Law a Trading: he answered that it was a Question of Fact; whereupon they found it to be a Trading. In Hankey v. Jones, Cowp. 745, Lord Mansfield expressed his Opinion on the Contrary, that it was a Question of Law, and it was held, that a Man, borrowing Money on his own Bills, for his own Occasions, paying Discount on what he drew, was not a Trading. In Inglis v. Grant, 5 T. R. 530, Campbell remitted Bills of Exchange from India to Europe, and received Goods. He gained considerable Sums of Money by the Difference of Exchange between India and England, and contracted several Debts in England. He was ruled to be a Trader; but it does not appear how far his remitting Bills for Profit in Exchange formed a material Ingredient in the Decision.

II.—It is said, 2 Bl Com. 476, that one single Act of Buying and Selling will not make a Man a Trader, but a repeated Practice and Profit by it. Mr Christian observes, it is a Question of Fact for the Jury, whether he bought once and sold once with Intent to buy and sell again like other Traders, as if he had furnished and opened a Shop, which Observation seems evidently correct.

It is agreed, that if there is a Trading, in the Nature of the Business, the Smallness of the Amount is not material, as in the Case of a Publican selling Liquors to be consumed out of the House to any Persons applying, although the Instances may have been very few and of very small Amount, Patman v. Vaughan, 1 T. R. 572, ex-parte Magennis, 1 Rose, 84. It must be left to a Jury, whether there is enough of Out-door Dealing to evidence the Intention, ibid.

A Farmer bought Horses unfit for Farming, re-sold them, and declared his Intention to become a Horse Dealer and take out a Licence, the Jury having found it not to be a Trading, a new Trial was granted, Wright v Bird, 1 Price Exch. 20. The Question is, if there has been more of Horse Dealing than can be fairly considered incidental to Farming, ex-parte Gibbs, 2 Rose 38, see Bartholomew v. Sherwood, 1 T. R. 573, n.

It being usual for Fishermen, to buy Fish from one another at Sea; and the Defendant having one Season several Years before bought Fish to fill up his Cargo, which he afterwards sold, Lord Ellenbrough, at N. P. ruled the Trading to be sufficient, and that the Bankrupt, having been proved so to have bought and sold one Season, must be presumed to have continued his Trading down to the Bankruptcy, Heanny v. Birch, 3 Camp. 233, 2 Rose, 356, and see ex-parte Gallimore, 2 Rose, 424.

Upon a Commission against the Lieutenant-Colonel of a Fencible Regiment, as a Horse Dealer, Lord Eldon said, "that if they could

Parliament, shall either by himself or others by his Procurement, 21 Jac. I. Cap. 19. A. D. 1623.

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bring it to the Case of an Innkeeper, that a Jury could infer from some Acts of Selling that he meant to sell more, so as to constitute a general Dealing, neither his Situation in the Army, nor any other would prevent the Effect of the Bankrupt Laws; but it could not be maintained, that if he bought a Horse, and sent him to Tattersall's, with the Hope of getting a Guinea or two more, that would make him a Trader. The Laws were never meant to attach upon such occasional Transactions," ex-parte Blackmore, 6 Ves. 3.

A Person is not a Trader by such incidental Acts as a Schoolmaster selling Books to his own Scholars only, Valentine v. Vaughan, Peake 76; by a Contractor for victualling the Fleet selling off the Surplusage, Gibbins v. Thompson, 1 Ventr. 270; a Farmer occasionally buying Hay, Corn, Horses, and Pigs, which was connected with his Occupation of a Farmer, with an Intent to sell again *what he did not want* for Profit, Stewart v. Ball, 2 N. R. 78.

An Executor, carrying on Trade for the Benefit of Infants and others, is personally liable for the Contracts entered into in such Trade, and amenable to the Bankrupt Law, ex-parte Nutt, 1 Atk. 102, Hankey v. Twogood, Cooke 67, Viner v. Cordell, 6 Esp. 88; but when he only buys Wares to repair the old Stock, that will not make him a Trader, admitted ex-parte Nutt; so it would seem in any other Case, when the Buying was only with a View to make the subsisting Stock saleable. These Cases indeed depend upon the same general Principles with respect to Trading for Profit and occasional Acts as in the Case of Persons acting for their own Benefit.

III. An Infant cannot be made a Bankrupt, ex-parte Sydebotham, 1 Atk. 146; but when he held himself forth as an Adult, Lord Eldon refused to interfere, on Petition, and left him to his Action, ex-parte Watson, 16 Ves. 265.

A married Woman, who is a Feme sole Trader, by the Custom of London, may be made a Bankrupt, ex-parte Carrington, 1 Atk. 206, Lavie v. Phillips, 3 Burr. 1783, 1 Blac. 570.

In ex-parte Preston, Green, B. L. 9, Lord Apsley directed the Commissioners to declare a married Woman, separated by Articles from her Husband, with Liberty to Trade, a Bankrupt. But Query if this could be *now* supported, as certainly no Action can be maintained, and there can be no legal Debt to the Petitioning Creditor.

Lord Thurlow superseded a Commission against a Woman who married after the Act of Bankruptcy, ex-parte Mear, 2 Bro. 266, see Observations, 2 Christ. 50.

A Commission may be supported against a Clergyman although prohibited from Trading by Statute, per Lord Hardwicke, ex-parte Meymott, 1 Atk. 197, and there are many Instances of such Commissions. So against Members of Parliament: a Commission issued against an Earl of Suffolk; although there may be some Powers which Commissioners cannot execute against a Peer, S. C.

As to a Commission against a Lunatic, Qy. vi. Anon. 13 Ves. 590; as to an attainted Party, vi. Bullock's Ca. 14 Ves. 461. It was there stated that in Ryland's Case it had been done; my own Recollection is, that in Ryland's Case, which occurred only in 1783, the Commission was before the Attainder.

IV. In Cotton v. Daintry, 1 Vent. 69, 2 Keb. 487, Lut. III. it was held, that no Commission could be supported in Respect of selling off the Effects of a former Trading, but soon afterwards it was ruled that a Person, having the Effects of his former Trading by him to a great Amount, and obtaining Credit thereon, was within the Statute, for Men cannot take Notice when another withdraws his Trade, or when he commands his Factors to deal no further, but they, seeing Goods in his

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obtain any Protection or Protections, other than such Person or

TRADING.

Hands, are apt to trust him, Sir Anthony Bateman's Case, 1 Ventr. 166; and it is held, if a Person ceases to buy, but still continues to sell what he has bought, he is still a Trader, see 2 Christ. 14, Heylor v. Hall, Palm. 325.

In the Case ex-parte Paterson, 1 Rose, 405, Lord Eldon said, "that whether the Party has ceased to be a Trader does not depend upon the Fact whether or not you can find any specific Acts of Trading, but whether or not, in Point of Intention, he had ceased to be a Trader. It is a Question for a Jury, whether there was an entire Cessation of Trading, or merely an Interruption, with an Intention of resuming it when an Opportunity should offer."

Upon the Point, whether a Commission can be sustained by an Act of Bankruptcy committed after retiring from Trade, the Debts contracted in Trade remaining unpaid, Lord Eldon said, that it was his clear Opinion, unqualified by any Doubt, that the Commission might be sustained. S. C.

(2.) There may be some Question, whether this Act, as subjecting Scriveners to be made Bankrupts, is not, with the subsequent Part of the Clause respecting Acts of Bankruptcy, repealed by 10 Anne, ch. 15 post; but I apprehend that the Repeal would be considered only to apply to the Acts of Bankruptcy, and the Statute as applicable to Scriveners is regarded in several Cases as subsisting, and supposing the Repeal to have been made, Lord Hardwicke expressed himself clearly of Opinion, that a Scrivener was comprehended under the Words Bankers, Brokers, and Traders, (5 Geo. 2). It has been very usual to take out Commissions against Attornies who had been employed in Mortgage Transactions, and charged for Procuration, by the Description of *Money Scriveners*, but some late Decisions shew that such Commissions cannot be supported. In the Matter of Warren, 2 Sch. and Lef. 414, Lord Redesdale said, I think it must now be pretty well understood, that an Attorney or Solicitor, acting in his common Business, and merely taking Procuration Money upon a Loan, does not thereby become a Scrivener subject to the Bankrupt Laws. But the Bankrupt is now represented as a Person standing in a different Situation, as dealing for Loans of Money, having Money put into his Hands, to lay out upon Security, and laying it out accordingly in the ordinary Course of the Trade of a Scrivener, within the Meaning of the Statute of Jac. 1. If this Case can be established, the Commission must stand. In ex-parte Paterson, 1 Rose, 402, Lord Eldon said, "the Trading of a Scrivener does not depend upon the Fact whether the Bankrupt, (who was an Attorney), had or had not occasionally done Acts which a Scrivener peculiarly and properly would have done; not upon what he may have done upon one Day and what upon another, but upon his Intention generally to get a Living by so doing;" and see n. ibid, where in ex-parte Malkin, and reported also, 2 V. and B. 31, 175, the Lord Chancellor said, "I have heard learned Lawyers say, they considered a Scrivener to be a Person who took Procuration for Employment of Money, and included all Charges for Deeds, &c. under that Procuration." He had a Notion, that if an Attorney, acting to such an Extent as to afford Evidence of a general Intention, receives Commission for laying out Money, as well as Fees for drawing and executing Conveyances, that would be a Scrivener, but he was not sure his Notion was well founded." An Issue was directed, which was tried before Gibbs, C. J. from whose Direction to the Jury, 2 Rose, 28, 3 Camp. 534, the following are Extracts:—

"The Difficulty of arriving at a correct Conclusion upon this Question arises from the Circumstance that there is now no living Character engaged in that Occupation, from whom the Nature of it can be ascer-

Persons as shall be lawfully protected by the Privilege of Parliament; or shall prefer or exhibit unto his Majesty, his Heirs, or Successors, or unto any of the King's Courts, any Petition or Petitions, Bill or Bills, against his or her Creditor or Creditors or any of them, thereby desiring or endeavouring to compel or enforce them or any of them to accept less than their just and principal Debts, or to procure Time or longer Days of Payment than was given at the Time of their original Contracts; [or being indebted to any Person or Persons in the Sum of one hundred Pounds or more, shall not pay or otherwise compound for the same within six Months next after the same shall grow due, and the Debtor be arrested for the same, or within six Months after an original Writ sued out to recover the said Debt, and Notice thereof given unto him or left in Writing at his or their Dwelling-house or last Place of Abode;] or being arrested for Debt (3) shall after his or her Arrest lie in Prison two Months or

tained. As a distinct Trade it has been for some time discontinued, it has severed itself into various Branches, the formerly familiar Habits of it have disappeared, and from the Books alone we are now with Difficulty enabled correctly to ascertain the Character of its Existence."

"Before the Establishment of Bankers as a distinct Occupation, Deposits were made with the Scrivener, to be employed in advantageous Purchases and Speculations, but confiding to him in the Meantime the Use of and the Control over the Money, not in the Nature of Money numbered and specifically reclaimable, but generally, and to be blended with his own and to be invested, when the Occasion for which it was destined should present itself.

"The Legislature deemed it of great Importance that this Description of Traders should be made subject to the Bankrupt Law; he was trusted with other Men's Property in the Habits of at that Time a notorious and extensive Dealing, and the public Protection required, in the Event of his Insolvency, the speedy and equalizing Remedy of the Bankrupt Law; since that Time the Business has almost ceased. Jack Ellis is mentioned in Boswell's Life of Johnson, as the last Person who exercised it. It has now been partially adopted by the Banker and partially by the Attorney, and as the Banker would not become an Attorney by filling up occasionally a Bond, neither can an Attorney be considered as a Banker or Money Scrivener from an occasional Deposit of Money with him. In my View of the Case, he must be trusted with the Money to be laid out as Occasion may require. It is not his being sent with the Money from the Lender to the Borrower, nor receiving the Money contracted to be lent one Side and borrowed on the other, in Order to pay it over to the Person borrowing, the Circumstance of Money passing and repassing through his Hands does not constitute this Species of Trading; there must be a Depositing of other Men's Money and Estates, by which I do not mean Money deposited upon one or two Occasions merely, nor what he may sometimes incidentally or accidentally have received, in Order to seek a Borrower for it, but a general Habit or Intention so to get his Living."

(3.) The Months are Lunar Months.—The Day of the Arrest is included in the Time, Glassington v. Rawlins, 3 E. 407. In Hope v. Gill, Beawes Lex Merc. 487, it was held, that the Commission was supported by Relation, although taken out within the two Months. The Contrary was ruled in Gorden v. Wilkinson, 8 T. R. 507. This Decision was founded upon the erroneous Supposition of its being re-

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more, upon that or any other Arrest or Detention in Prison for Debt; [or being arrested for the Sum of one hundred Pounds or more of just Debt or Debts, shall at any Time after such Arrest, Escape (4) out of Prison or procure his Enlargement by putting in common or hired Bail;] shall be accounted and adjudged a Bankrupt to all Intents and Purposes; and in the said Cases of Arrests or lying in Prison for such Debt or Debts, or getting forth by common or hired Bail, from the Time of his or her said first Arrest. (5).

Commissions, Orders, &c. provided by 13 Eliz. c. 7 and 1 Jac. I. c. 15, shall be pursued against him that is described to be a Bankrupt by this Act.

III. And be it further enacted by the Authority of this present Parliament, that the like Commissions, Orders, Benefits and Remedies which are and be provided and limited by the said former Acts of Parliament, made in the thirteenth Year of the late Queen Elizabeth, and in the first Year of the Reign of our Sovereign Lord the King's Majesty, against any Bankrupts in them or either of them described, or for or concerning his, her or their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandize and Debts, or any of them, shall and may be had, pursued, taken and expounded, against such Person and Persons as are herein and hereby declared, described or expressed to be Bankrupts, and against his, her and their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandize and Debts, in such Manner and Form as the same ought and might have been, if the Persons herein declared, described or expressed to be Bankrupts had been by the said Statutes or either of them described to be Bankrupts, to all Intents and Purposes whatsoever.

Orders, &c. provided by this Act shall be pursued against him that is described to be a Bankrupt by 13 Eliz. c. 7 and 1 Jac. I. c. 15.

IV. And be it further enacted by the Authority aforesaid, that the same Orders, Benefits and Remedies, which are and be provided and limited by this present Act against any Bankrupts, in or by this Act declared, described or expressed to be Bank-

quired by Statute, that the Petitioning Creditor should make Affidavit that he believes the Party to be a Bankrupt, as to which vide Note to 5 Geo. 2. c. 30, sec 23 post. If the Party being arrested is suffered, on Account of Illness, to remain some Time in his own House, this is a sufficient lying in Prison, Stevens v. Jackson, 1 Marshall, 469. Secus if he is permitted to go at large, and afterwards returns into Custody, Barnard v. Palmer, 1 Campb. 509. In Case real Bail is put in, the Time only runs from the Surrender, Bull N. P. 39, but Bailing in Order to turn the Party from one Custody to another is held to be mere Form, and not to amount to a Discontinuance of the Imprisonment, Dunscomb v. Walter, 3 Lev. 37, 1 Ventr. 370, Raym, 4. In ex-parte Bowes, 4 Ves 168, dubit. per Lord Loughborough, if a Person in Custody, under a criminal Judgment, and charged with civil Process is within the Act.

(4.) This means a real Escape from Custody; when a Person, removing under a Habeas Corpus, was taken into another County, for the Purpose of calling on his Attorney, the Case was held not to be within the Act, Rose v. Green, 1 Bur. 437.

(5.) Money paid to the Bankrupt, after his Arrest, must be repaid to his Assignees, King v. Leith, 2 T. R. 241.

The Parts of this Section included in Brackets are repealed by Stat. 10 Anne, c. 15, post.

rupts, or for or concerning his, her or their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts or any of them, or the Discovery of them or any of them, shall from henceforth be had, pursued, taken and expounded against such Person and Persons as are declared or expressed to be Bankrupts by the said former Acts of Parliament or either of them, and against his, her and their Lands, Tenements, Hereditaments, Fees, Annuities, Offices, Goods, Chattels, Wares, Merchandizes and Debts, in such Manner and Form as the same ought and might have been, if the Persons in the former Statutes or either of them described to be Bankrupts, had been mentioned and described to be Bankrupts in and by this present Act.

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V. And whereas by the former Laws, the Commissioners appointed have Power to examine the Bankrupt himself, and such Person or Persons as are suspected to have or detain any of the Estate, Goods or Chattels of the Bankrupts; but some Doubt hath been made, whether the Commissioners have Power to examine the Wives of the Bankrupts touching the same, by Reason whereof the Bankrupts' Wives do daily conceal and convey away, and cause to be conveyed away, much Part of their Husbands' Monies, Wares, Goods, Merchandize and other Estate, to Person or Persons unknown to any but such Wives, by Reason whereof much of the Bankrupt's Estate is concealed and detained from the Creditors:

VI. For clearing therefore the said Doubt, and avoiding the Inconveniences aforesaid, be it declared and enacted by the Authority aforesaid, that after such Time as any Person shall by the said Commissioners executing the said Commission, or the greater Part of them, be lawfully adjudged or declared to be a Bankrupt, the said Commissioners executing such Commission shall have Power and Authority to examine upon Oath the Wife and Wives of all and every such Bankrupt, for the Finding-out and Discovery of the Estate and Estates, Goods and Chattels of such Bankrupt or Bankrupts, concealed, kept or disposed of by such Wife or Wives, in their own Persons, or by their own Act or Means, or by any other Person or Persons; and that she and they, the said Wife and Wives, shall incur such Danger or Penalty for not coming before the said Commissioners, or for refusing to be sworn and examined, or for not disclosing the Truth upon her or their Examination or Examinations, as in and by the said former Laws or either of them is already made and provided against any other Person or Persons in like Cases.

The Bankrupt's Wife may be examined by the Commissioners.

VII. And be it further enacted by the Authority aforesaid, that if any Bankrupt shall upon his or her Examination or Examinations, to be taken before the said Commissioners executing the said Commission, be found fraudulently or deceitfully to have conveyed away his or her Goods, Chattels, Lands, Tenements,

The Bankrupt that fraudulently concealeth [illegible] Goods, or [illegible] [illegible] just [illegible] why he became Bankrupt, shall be set

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upon the Pillory, and lose one of his Ears.

Offices, Fees, Rents or Annuities, or other Estate or any Part thereof, to the Value of twenty Pounds or above, to the End and Purpose to hinder the Execution of this Statute or of any other the aforesaid Statutes, or thereby to defraud, delay, or hinder his or her Creditors of the same, and shall not upon his or her Examination discover unto the said Commissioners, and (if it lie in his or her Power) deliver unto the said Commissioners all that Estate, Goods and Chattels so fraudulently and deceitfully conveyed away as aforesaid, or by him or her, his or her Means, kept and detained from the said Commissioners, or that cannot make it appear unto the said Commissioners, that he or she hath sustained some casual Loss, whereby he or she is disabled to pay what he or she then owed, shall or may be indicted for such Fraud or Abuse at the Assizes or General Sessions to be holden before the Judges of Assize, or Justices of the Peace of the County or Place where he or she shall become Bankrupt: and if upon such Indictment or Indictments the Bankrupt be thereof convicted, he or she so convicted shall be set upon the Pillory in some public Place for the space of two Hours, and have one of his or her Ears nailed to the Pillory and cut off.

The Commissioners may break open the Bankrupt's Doors, &c.

VIII. And for that some Doubt is conceived, whether the Commissioners in Case of Resistance have Power by the former Laws to break open, or cause to be broken open, the House or Houses of such Bankrupts, which if they have not, the Remedies by the former Laws given will be to little Effect: be it therefore enacted, that in Execution of the said Commission, it shall be lawful to and for the said Commissioners or the greater Part of them, or any other Person or Persons, Officer or Officers, by them or the greater Part of them to be deputed and appointed by their Warrant or Warrants under their Hands and Seals, to break open the House or Houses, Chambers, Shops, Warehouses, Doors, Trunks or Chests of the said Bankrupt, where the said Bankrupt, or any of his or her Goods or Estate shall be or reputed to be, and to seize upon and order the Body, Goods, Chattels, Ready Money and other Estate of such Bankrupt, as by the said former Laws are limited and appointed, whether it be by Imprisonment of his or her Body or otherwise, as to the said Commissioners or the greater Part of them shall be thought meet.

The Bankrupt's Goods shall be rateably divided, notwithstanding any Judgment, Recognizance, &c.

IX. And for the better Division and Distribution of the Lands, Tenements, Hereditaments, Goods, Chattels and other Estate of such Bankrupt to and amongst his or her Creditors: be it enacted, that the Commissioners, or the greatest Part of them, shall and may examine upon Oath or by any other Ways or Means as to them shall seem meet, any Person or Persons, for the Finding out and Discovery of the Truth and Certainty of the several Debts due and owing to all such Creditor and Creditors as shall seek Relief by such Course of

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Commission to be sued forth as aforesaid: and that all and every Creditor and Creditors having Security for his or their several Debts, by Judgment, Statute, Recognizance, Specialty with Penalty or without Penalty, or other Security, or having no Security, or having made Attachments in London, or any other Place, by Virtue of any Custom there used, of the Goods and Chattels of any such Bankrupt, whereof there is no Execution or Extent served and executed upon any the Lands, Tenements, Hereditaments, Goods, Chattels and other Estate of such Bankrupts, before such Time as he or she shall or do become Bankrupt, shall not be relieved upon any such Judgment, Statute, Recognizance, Specialty, Attachments or other Security for any more than a ratable Part of their just and due Debts, with the other Creditors of the said Bankrupt, without Respect to any such Penalty or greater Sum contained in any such Judgment, Statute, Recognizance, Specialty with Penalty, Attachment or other Security (6).

(6.) As the general Right of proving Debts and receiving a Dividend under the Commission, and the Discharge of the Bankrupt under his Commission, are commensurate, (subject to certain Exceptions), it is proposed to insert such Observations as are thought material upon these Subjects, in a Note to Statute 5 Geo. 2. c. 30, sec. 7. which contains the Provision for such Discharge.

This seems to be the proper Place for noticing the Doctrine, that if a Creditor has a Pledge of any Part of the Bankrupt's Property, the Pledge must be first sold, and the Creditor can only be admitted to prove the Deficiency of his Debt; and it is an established Rule, that any Person, offering to prove a Debt, must in his Proof specify the Securities which he has received, and must produce them before the Commissioners, by whom they are regularly marked as exhibited.

The Necessity of the Rule and of such Production is peculiarly manifest, when the Securities are of a negociable Nature, and may by Possibility be afterwards brought forward by another Creditor.

It was formerly necessary, in all Cases of Creditors having a Security by Way of Mortgage or Pledge, to petition the Lord Chancellor to direct a Sale of the Property pledged, and for the Creditors to be permitted to prove the Remainder of the Debt. A general Order was made by Lord Loughborough, in 1794, for the Commissioners to take an Account of the Money due upon the Mortgage, and to sell the Premises, and admit the Creditor to prove the Deficiency.

There are several Cases respecting equitable Mortgages, by a Delivery of the Title Deeds. The Majority of these Cases have arisen in Bankruptcy, but the Detail of them does not particularly belong to the Bankrupt Law, as the same Question would arise with Persons having an Interest in the Estate, supposing no Bankruptcy to have taken place, but as these Cases often involve nice and difficult Questions, Lord Eldon has held, that they do not fall within the general Rule, and that there must be a Petition upon the particular Case, ex-parte Payler, 16 Ves. 434; and the Costs of the Application, including the fair Expences of the Assignees, are to be paid out of the Proceeds of the Sale, ex-parte Garbutt, 2 Rose, 78; and a Purchaser is not bound to accept the Title under the Sale of an equitable Mortgage, without the Concurrence of the Assignees, Hawkins v. Ramsbottom, 1 Price, 138.

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The Commissioners may proceed when the Bankrupt by Fraud makes himself Accountant to the King.

X. And be it further enacted, that if it shall happen, any

An Order of Sale may be obtained by a second Mortgagee, ex-parte Howell, 7 Vin. 102.

When an Order of Sale is obtained by a first Mortgagee a second Mortgagee is not compellable to join in such Sale, except upon Payment of the Money owing to him. The Order only affects the Equity of Redemption so far as regards the Title of the Assignees, ex-parte Jackson, 5 Ves. 357.

In ex-parte Nunn, 1 Rose, 322, a Creditor who had a Security, being desirous of voting in the Choice of Assignees, was allowed to limit the Benefit of his Security to a certain Sum, and to prove for the Remainder of the Debt. If the Security produced more than the limited Sum, the Arrangement would of Course enure to the Benefit of the Estate. And where a Proof was rejected, previous to the Choice of the Assignees, on the Ground that the Creditor had obtained Property of the Bankrupt which under the Circumstances it was supposed that he was not entitled to retain, Lord Eldon, upon an ex-parte Petition, directed, that the Property should be valued, and that he should be admitted to prove the Remainder of his Debt, giving Security to deliver up the Property, in Case it should eventually appear that he was not entitled to retain it, ex-parte De Tasted, 1 Rose, 324, and see ex-parte Smith, 2 Rose, 63.

The Mortgagee may avail himself of his Security to the full Amount of the Principal and Interest, but can only prove for the Deficiency upon the Estate to the Amount of the Principal and Interest to the Date of the Commission.

A Creditor who abandons his Pledge, under the mistaken Opinion that it is of no Value, and proves his Debt, cannot afterwards resort to the Pledge, upon discovering the Mistake, ex-parte Downes, 1 Rose, 96.

Bonds, Bills, and other Securities, being pledged, must be disposed of in like Manner as Mortgages, before the Creditor is admitted to prove, ex-parte Smith, Co B. L. 123.

But when there are distinct Engagements by the Bankrupt and other Persons, the Creditor is entitled to prove for the full Amount of the whole, until he has received to the full Amount of 20s. in the Pound, (including Interest where due, to the Time of Proof,) ex-parte Martin, 2 Rose, 87. If he has received any Part from one Estate before he makes his Proof upon another, the Proof can only be for the Residue, and an Order of Dividend, under which the Creditor is entitled to receive a Dividend upon his Proof, is considered as equivalent to the actual Payment of such Dividend, ex-parte Leers, 6 Vesey, 644, ex-parte Todd, 2 Rose 202, (n). The Rule applies, although the Claim is made and the Affidavit sworn before the Order of Dividend on the other Estates, ex-parte Royal Bank of Scotland, 2 Rose, 197; except where the Proof was rejected upon a Point of Law afterwards overruled, as in this Case the Proof would relate back to the Time of the Claim at which Time, (as shewn by the subsequent Decisions had in the Nature of an Appeal,) that it ought to have been received, Cases in re Gibson and Johnson, cited ibid.

I take it to be the settled Practice, that after the Proofs are actually made, the Creditor is to receive the Dividend upon the full Amount of his Proof from the several Estates, although exceeding 20s. in the Pound, and that for the Surplus so received, he is a Trustee for the Benefit of that Estate, which ought to be relieved by the others according to the Order of Priority. For Instance, if a Dividend is paid by the Estate of the Indorser of a Bill of 15s. by that of the Drawer of 4s and by that of the Acceptor of 19s. the Creditor, after retaining 1s. to complete his 20s. in the Pound, is a Trustee for the Estate of the Indorser, to the full Amount of the 15s. paid, and of

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the Lands, Tenements, Goods, Chattels, Debts or other Estate of any Bankrupt, to be extended after such Time as he or she is become a Bankrupt, by any Person or Persons, under Colour or Pretence of his or their being an Accountant, or any Way indebted unto our Sovereign Lord the King's Majesty, his Heirs or Successors, that then it shall be lawful to and for the said Commissioners to examine upon Oath, whether the said Debt were due to such Debtor or Accountant, upon any Bargain or Contract originally made betwixt such Accountant and the said Bankrupt, the said Debtor or Accountant and his or their Servants: and if such Bargain or Contract was originally made to and with any other Person or Persons than the said Debtor or Accountant, or for the Use and Trust of any other Person or Persons, then it shall and may be lawful to and for the said Commissioners or the greater Part of them, to order and dispose of all such Lands, Tenements, Hereditaments, Goods, Chattels and Debts, so extended as aforesaid, to and for the Use of the Creditors which shall seek Relief by the said Commission; and that the Order and Disposition of the said Commissioners, or the greater Part of them, shall be good and available against the said Extent, and against all Persons claiming from, by or under the said Extent; and that such Person and Persons to whom the said Lands, Tenements, Goods and Chattels so extended, shall be bargained, sold, granted or assigned by the Commissioners aforesaid or the greater Part of them, shall have good Remedy to have, demand, and recover the same against such Person and Persons who shall detain the same; and for that it often falls out, that many Persons before

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the Drawer for 3s. If the Dividends on the Estates previously liable are first paid, the Creditor will only receive so much from the Estates liable as between themselves as will be requisite to satisfy the whole of his Debt, see ex-parte De Tasted, 1 Rose 10.

The Creditor is entitled to prove the full Amount of his Debt against the Bankrupt, although he may have specific Pledges affecting the Property of other Persons, ex-parte Parr. 1 Rose, 76.

Where Bills of Exchange, &c. are passed by the Debtor to the Creditor, for the Purpose of securing a Debt of smaller Amount, the Proof may be upon the Estates of all other Persons liable, to the full Amount of the Security, but against the immediate Debtor, it can only be for the actual Debt, see ex-parte Burn, 2 Rose, 55.

When the Owner of a Bill of Exchange delivers it to his Creditor without Indorsement, it is considered as a Security, and must be sold. When it is indorsed, it has been in some Cases regarded as a general Rule, that it is not to be considered as a Pledge, but as an Engagement, for which the Holder is entitled to prove against the respective Parties; but in ex-parte Blackburne, 10 Ves. 206, Lord Eldon expressed his Doubts of the Generality of this Doctrine, and perhaps the true View of the Case may be to consider the Indorsement as only prima facie Evidence of the Intention to contract, liable to be repelled by shewing, that the Intention was only to deliver the Bill as a Pledge, especially where the Indorsement was requisite to give it Effect as such; as in the Case of an Indorsement by the Payee or special Indorsee.

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they become Bankrupts, do convey their Goods to other Men upon good Consideration, yet still do keep the same, and are reputed the Owners thereof, and dispose the same as their own:

Goods in the Possession, &c. of the Bankrupt are liable to pay his Debts, notwithstanding any former Grant, &c.

XI. Be it enacted, that if at any Time hereafter any Person or Persons shall become Bankrupt, and at such Time (7) as they shall so become Bankrupt shall by the Consent and Permission of the true Owner and Proprietary have in their Possession, Order, (8) and Disposition, any Goods or Chattels, whereof they shall be reputed Owners, and take upon them the Sale, Alteration, or Disposition as Owners, that in every such Case, the said Commissioners or the greater Part of them, shall have Power to sell and dispose the same, to and for the Benefit of the Creditors which shall seek Relief by the said Commission, as fully as any other Part of the Estate of the Bankrupt: and for the better Payment of Debts and discouraging Men to become Bankrupts: (9)

(7.) An Order was given by Cotterell, in December, to a Wharfinger, to deliver Goods in his Possession to *Mingay*. Mingay suffered them to remain until the 13th of June, when Cotterell stopped Payment, and Mingay applied for and received the Goods. Cotterell in the same Month became Bankrupt, and it was ruled, that the Case was not within the Statute, the Court being of Opinion, that by the clear intelligible Words of the Statute, which are positive and emphatical, incapable of being obscured by any Construction, it only applied to Possession at the Time of the Bankruptcy, and that it would be highly dangerous by any Construction to vary the Period of Time fixed by the Statute, Darby v. Smith, 8 T. R. 82; which was urged as an Authority for the opposite Construction, was considered, as having proceeded upon the Ground that the Possession had not been changed previous to the Bankruptcy, and not as establishing the Doctrine that the Statute applied to a Case where the Possession had been changed, Jones v. Dwyer, 15 East, 21.

(8.) In Thackthwaite v. Cock, 3 Taunt. 487, it was urged, that from the Conjunction being Copulative, Possession, Order, *and* Disposition, they must all concur to bring a Case within the Act; but Mansfield, C. J. said, that all the Authorities extant were wholly inconsistent with and an Answer to that Argument.

(9.) This Section may be considered, with Respect to its Effect and Operation, as one of the most important in the whole System of the Bankrupt Law. The Object of the previous Statutes is only to transfer to the Creditors such Property and Interest as actually belong to the Bankrupt himself, and subject to all Liabilities with Respect to the Claims of other Persons to which the Bankrupt would have been subject. The present Statute has the Effect of giving to the Creditors, in Respect o. the apparent Ownership of the Bankrupt, and the Credit supposed to be derived therefrom, a Right derogatory and paramount to that which would exist as between the Bankrupt and third Persons.

It was for some Time a controverted Question, whether the Operation of the Section was not by the Preamble restrained to Property formerly belonging to the Bankrupt and remaining in his Possession after an ostensible Change of Possession, but the Contrary was finally settled in Mace v. Cadell, Cowp. 232, and is now the undisputed Law With Respect to Assignments of personal Property, the Assignor re-

XII. Be it further enacted, that the said Commissioners

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A Grant of the intailed Lands of the Bankrupt shall be good.

maining in Possession, which are void under Stat. 13 Eliz. c. 5, against Creditors in general, see ante, P. 2, Class 7. and Notes ad Finem.

It is agreed that the Provision does not extend to real Estates, which are held by Title, without Reference to the Possession; and this Distinction extends to such Machinery for the Purposes of Trade as is attached to the Freehold, although removable as between Landlord and Tenant, as the Coppers of a Brewery, Ryall v. Rowles, 1 Ves. 348. 1 Atk. 176, Horn v. Baker, 9 East, 215. In several Cases which have occurred to me in Practice, with Respect to the Bankruptcy of Dyers and Calico Printers, there has been very considerable Difficulty in ascertaining whether particular Articles were or were not so attached to the Freehold as to be exempt from the Operation of the Statute. In all Disputes upon this Subject, it is desirable for the Party asserting the Right to stand in the Situation of Plaintiff against the opposite Party assuming the Possession, inasmuch as if the Verdict is with the Plaintiff, as to any Portion of the Property, he has the Costs, whereas the Defendant, to save the Costs, must be right throughout.

In Bryson v. Wylie, Cooke's Bankrupt Laws, 1 Bos. and Pul. 85 n. the Question related to a *Dyer's Plant*, which was assumed to be Property within the Operation of the Statute; and the Case turned upon the Kind of Possession. The Meaning of this Term is not so generally known as the Case supposes. I apprehend that it comprizes the general Stock of Implements and Utensils, as well fixed as movable, the latter of which are settled to be within the Operation of the Act, the former not so.—The Circumstance of the Property in Question (Standing Timber), being Part of the Freehold, seems to have been overlooked in Holroyd v. Gwynne, 2 Taunt. 176.

The Act extends as well to Choses in Action and personal Rights and Privileges as to visible Property, Ryall v. Rowles ub. sup. Gordon v. E. I. Compy. 7 T. R. 228. The Interest in a Newspaper, (supposing it to be Property which would pass against the Bankrupt), Longman v. Tripp, 2 N. R. 67. In ex-parte Granger, (1812, MS.) the Case came before the L. C. of a Bankrupt having a Patent for an Invention, who, after having mortgaged the Right, continued in the notorious Use of the Invention until his Bankruptcy. The L. C. was induced to think, that the Right passed to the Assignees under the Statute, but directed a Case for the Opinion of the Court of B. R. which was never argued.

In the above-mentioned Case of Ryall v. Rowles, which received a very elaborate Discussion from Lord Hardwicke, assisted by Lee, C. J. Parker, C. B. and Burnet, J. and which may be considered as the first general Exposition upon the Subject, it was ruled, that a Mortgage of Stock-in-Trade, Debts, and Utensils, (not being Fixtures), suffering the Mortgagor to continue in Possession, was within the Act and that the Assignees were entitled.

In Bryson v. Wylie, ub. supr. the Plaintiff being possessed of a Dyer's Plant, sold it to the Bankrupt, who gave two Promissory Notes, which he was unable to pay, and in Consideration of the Plaintiff giving up the Notes, the Bankrupt re-assigned the said Plant to the Plaintiff, who by the same Deed let it to the Bankrupt at an annual Rent, and the Case was ruled to be within the Statute. Lord Mansfield—"the Law has said, that a Trader cannot Mortgage his Effects and at the same Time keep Possession. What is the Case here? He sells and keeps Possession, and pays Interest for the Money. If this contrivance were suffered, it would open a Door to avoid the Statutes, and therefore it ought not to be allowed to prevail."

In Horn v. Baker, 9 East, 215. where a Person engaged in Distillery agreed to withdraw from the Concern, and allow the Bank-

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rupts to use the Premises, Vats, Stills, and Utensils, for which they were to pay an Annuity for the Life of the Owner and his Wife, with Liberty to purchase them at the Death of the Survivor, the Statute was held to attach as to the movable Property; and although some Notice was taken of the special Circumstances of the Case, it appears to be the Opinion of the Court, as a general Proposition, that where Articles of Trade are let, accompanied by apparent Ownership, and there is no Usage of Trade as to the Letting of such Articles, the Case falls within the Statute. The following Extract from the Opinion of Lord Ellenborough seems completely to embrace the View which was taken of the Subject: "As between the Parties to the Contract, the new Partners could not sell, alter, or dispose of the Property, but according to the Provisions of the Deed; but as to the World in general they appeared to have the same Right over it which the former Partners had. Had they not then the reputed Ownership? If as in some Manufactories, where the Engines necessary for carrying on the Business are known to be let out to the several Manufacturers employed upon them, there had been a known Usage in this Trade for Distillers to rent or hire the Vats and other Articles used by them for the Purpose of Distilling, the Possession and Use of such Articles would not in such a Case have carried the reputed Ownership. But in the Absence of such an Usage there is nothing stated in the Case which qualifies the reputed Ownership arising out of the Possession and Use of the Things in their Trade. The World would naturally give Credit to the Traders on their reputed Property, and the Person who permitted them to hold out to the World the Appearance of their being the real Owners ought to be answerable for the Consequences, and was so intended to be by the Statute." The other Judges, Grose, Lawrence, and Le Blanc, who all gave their Opinions at Length, expressed themselves to the same Effect. In a subsequent Case, Lawrence, J. said, with Reference to the Observations in Horn v. Barker, as to the Usage of letting Machinery in particular Trades, that "in the Counties of Nottingham and Leicester, it was extremely common for the Working Hosiers to have on Hire the Possession of Stocking Frames, valuable Machines, which they were unable to purchase, and which came within the Reason of Job Carriages, Job Horses, and the like," Thackthwaite v. Cock, 3 Taunt. 487.

The Possession of a Person as a Broker or Factor is agreed in all the Cases not to be within the Purview of the Act. So in the Case of an Executor or Trustee. Where a sleeping Partner made his Copartner, (in whose Name the Business was carried on, and who, as to a Share of the Business, had made a Declaration of Trust to him, in Order to avoid the Operation of the Irish Banking Act), Executor and Residuary Legatee, subject to the Payment of Debts and Legacies; Lord Redesdale held, that the Statute now under Consideration did not apply, and that the Creditors and Legatees were entitled to claim on the Deceased's Share, and speaking of the general Effect of the Clause, said, "Now that Clause refers to Chattels in the Possession of the Bankrupt, in his Order and Disposition, with the Consent of the true Owner. That means where the Possession, Order, and Disposition is in a Person who is not the Owner, to whom they do not properly belong, and who ought not to have them, but whom the Owner permits, means, or intends, as the Act supposes to have such Order and Disposition. The Object was to prevent Deceit by a Trader from the visible Possession of a Property to which he was not entitled; but in the Construction of the Act, the Nature of the Possession has been always considered, and the Words have been construed to mean Possession of the Goods of another, with the Consent of the true Owner. The Bankrupt was the Acting Executor and Residuary Legatee, and the Possession was therefore ac-

this Act, by Deed indented and inrolled within six Months (10) 21 Jac. 1 Cap. 19 A. D. 1623

cording to his Right, but was, as against him, chargeable in Favour of Creditors and Legatees. In all those Cases in which the Clause has been permitted to have the Effect of divesting the Right in the Person who had a Right to the Property, the Nature of the Possession has always been considered, and whether it was according to the Right. In Cases of specific Chattels, which are settled on Marriage upon the Husband for Life and then on the Children, the Possession has been with the Party, the Bankrupt, with the Consent of the Person, creating the Trust, and so far with the Consent of the true Owner; but the Possession was, according to the Title, qualified by the Rights of others, and whenever that has been the Case, I take it the Law has never been construed to extend to destroy that Right of Property; but it has been confined to those Cases where the sole and absolute Owner of the Property has permitted it to remain in Possession of the Trader in whose Possession it ought not to be" "I think, if we look at all the Cases, we shall perceive that the Law, (which in certain Cases, is a severe Law,) must always be construed by this Criterion. Was the Possession that of a Person not the Owner, with the Consent of the true Owner? Joy v. Campbell, 1 S. and L. 328.

Short Bills of a Customer, in the Hands of his Banker, are held not to be within the Act. There are several Cases, as to whether Bills were in the Hands of the Banker, by Way of Deposit for the Customer, or as having been transferred and passed in Account, do not pass, see Bolton v. Puller, 1 B. and P. 539, Giles v. Perkins, 9 E. 12, and the several Cases arising out of the Bankruptcy of Boldero and Co. ex-parte Pease, 1 Rose, 232, ex-parte the Wakefield Bank, id. 243, ex-parte the Leeds Bank, id. 254; but the Distinctions in these Cases are wholly unconnected with any Question respecting the Doctrine of reputed Ownership.

There are other Cases, where the Property has been in the Possession of the Bankrupt for a particular Purpose, in which the Statute was held not to apply.

In Walker v. Burnell, Doug. 317, the Bankrupt having obtained his Certificate, engaged in Trade on his own Account, and was continued in his House by the Assignees, as Agent for them in settling his Affairs, and in all Statements of his Affairs the Household Goods in Question were included. Upon a second Bankruptcy the Case was ruled not to be within the Act, Buller J. observed, (what has been repeatedly quoted with Approbation in subsequent Cases)—that "Questions of this Kind have much more of Fact than of Law in them.—The Sort of Possession, Disposition, &c. are Facts to be proved for the Consideration of the Jury. The Statute says *whereof they shall be reputed Owners.* Here the Bankrupt was not reputed Owner. Possession of the Goods exposed for Sale in a Shop may be within the Statute, but Possession of the Furniture in a House is no more Evidence of a Right to that Possession than of a Right to the House."

Collins v Forbes, 3 T. R. 316.—The Commissioners of the Victualling Office having advertised for Contracts for erecting a Stage, the Defendants having Difficulties in making the Contract in their own Name, employed the Bankrupt, a Carpenter, to make it in his Name, supplying him with Timber, and making him a weekly Allowance. The Timber was supplied accordingly, and received by the proper Officers as that of the Bankrupt; they swore that they would not have received it on Account of any other Person, and should not have permitted even the Bankrupt to dispose of it in any other Manner than for the Work contracted for, (but Query, could they have prevented him, the Receipt was a mere Approbation?) except such Parts as were unfit for the intended Purpose. The Case was ruled not to be within

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after the making thereof, in some of his Majesty's Courts of

the Act. Ashurst J. in delivering the Opinion of the Court, compared it to that of a Carpenter, who received Timber to convert it into a Waggon, or of a Tailor, to whom Cloth was sent to be worked up. See also Tooke v. Hollingworth, 5 T. R. 215, 2 H. B. 501, in which there is a Discussion respecting Property sent or delivered to the Bankrupt for a particular Purpose, but which did not turn upon the Construction of the Provisions at present under Consideration.

In Coldwell v. Gregory, 1 Price, 119, it was ruled by the Court of Exchequer, that the Possession of a Person who had a dormant Partner was not a Case within the Statute against such Partner.— Thompson, C. B. in delivering the Opinion of the Court, said " the short Case here is, that the Bankrupt and the Defendant were actually Partners in the Goods in Question, which were therefore the joint Property of both as Tenants in common, [this is not strictly correct Partners being Jointenants], and the Possession of the Defendant was the Possession of the Bankrupt. It is a very different Case where there is no Partnership between the Bankrupt and the Person claiming to be interested, otherwise there would be an End of what are called sleeping Partnerships altogether, which are now carried on to so great an Extent. If under this Statute, wherever joint Property is taken by the Assignee of a Bankrupt under a separate Commission, you deprive a solvent Partner of his Property, with what is he to pay the Partnership Debts, which he is still liable to be called on for. It would be a monstrous Thing to say, that if an Individual in a Firm become Bankrupt, the other solvent Partners may be stripped of their Property, and thus be deprived of the Means of satisfying the Partnership Debts. In the subsequent Case ex-parte Dyster, (August, 1815), 2 Rose, B. C. 256, the Lord Chancellor said, the Question whether the Assignees had a Right to possess the joint Property of D. and M. of which the latter only was the visible Owner, was a Case which of all others appeared to come within the Act, and he thought he should have no Difficulty in persuading the Barons who decided Coldwell v. Gregory, that the Report given of that Case, is, to say the least, not satisfactory. It is clear that the Doctrine of Execution does not decide the Question at all, as the Creditor in Execution can only take that which is the Property of the Creditor, whereas in Bankruptcy the Assignees may take whatever appears to be in the Order and Disposition of the Bankrupt.— He should wish therefore to decide the present Case with the Assistance of the Chief Baron and Mr. B. Richards, who concurred in the Judgment of Coldwell and Gregory.

I am not aware that whether any actual Decision has taken place of this very important Question, either in Confirmation or Contradiction of the Case of Coldwell and Gregory. So far as general Usage may have any Effect upon the Subject, the Possession of a Person having dormant Partners is as familiar an Usage as that of Factors, who to all Appearance may be the actual Owners of the Goods in their Charge. Supposing the Property to come to the Hands of the Assignees, or both Partners to be made Bankrupts, in Respect of their joint Trading, the Creditors of that Concern will have the Benefit of the Property, and the only Question will be, whether they are to take it in Exclusion of the Creditors of the Bankrupt in other Concerns, being on the other Hand excluded from the Benefit of his separate Property. If the sleeping Partner acquires the Possession, he is, independently of his Liability as a Partner to the Creditors of the Concern, accountable to the Assignees for the Bankrupt's share of any Surplus which may arise. It will be important to ascertain what has been the Practice under Commissions taken out against an ostensible and sleeping Partner, the ostensible Partner having other and separate Creditors, whether the Property embarked in

Record at Westminster, to grant, bargain, sell and convey any 21 Jac. I. Cap. 19. A. D. 1623.

Such Concern has been applied as joint or separate, as an established Practice either Way would be a very considerable Authority, see Jones v. Dwyer, 15 E. 21. —And Query, whether the Point is not fully decided by Lord Redesdale, in the Case of Joy v. Campbell, already cited?—In ex-parte Barrow, 2 Rose, 232, Slyth, senr. being in Partnership with Gyles, agreed to let Slyth, junr. have a Share of the Profits. The Partners Slyth and Gyles having become Bankrupts, and there being a Surplus beyond the Debts of the joint Creditors, Lord Eldon held, that the Son had no Claim upon the Father's Share of the Surplus against the separate Creditors of the Father, and considered it as a Case within the Statute.

With Respect to Goods left by a Purchaser in the Hands of the Seller—in ex-parte Flyn, 1 Atk. 185, Mathews the Bankrupt having 500 Barrels of Tar lying on the Quay, Flyn and Field agreed to purchase two-thirds of it, and it was agreed that the other third should be consigned to them, to sell on his Account, and that the Tar should be received from the Quay, and lodged in a Warehouse until they gave Orders for shipping it: Mathews put it in a Warehouse of his own, and became Bankrupt. Lord Hardwicke held, that the Case was not within the Act, as it was only in a temporary Custody, because the Buyers had not an Opportunity of selling it by shipping it off immediately. He also noticed its being undivided Property, of which they were Tenants in common, and there must be Possession in one or the other of them, and the Possession of one was the Possession of all. In West v. Skip. 1 Ves. 239, his Lordship expressed his Opinion, that if the Question arose in the Case of the Mortgage of Goods, or an absolute Sale, and the Vendor did not deliver them at the Time appointed, but on Trover kept the Vendee at Arm's-length, and in the Meantime became Bankrupt, that would not be considered as a Leaving the Goods by the Vendee in the Possession of the Bankrupt within the Act, the Vendee having done every Thing in his Power to get the Possession from him.

The Purchaser of Hops left them in the Warehouse of the Seller at a Warehouse-rent, where they remained exposed to the View of Persons coming to purchase promiscuously with the other Goods of the Bankrupt. There was Evidence of its being usual in the Trade to leave Hops in this Manner, and that any Mark of Distinction would hurt the Sale of them, by drawing Attention to the Length of Time they had been on Sale. The Case was ruled to be within the Act. Mansfield, C. J. said, that though the Custom of a Trade may have the Effect referred to in Horn v. Baker, (supra,) it must be a Custom more clearly proved than this is, and such a Custom that Persons dealing with the Traders might see and know that the Goods might possibly not be the Property of the Possessor. The Objection against disclosing the real Owner would be easily obviated, by having a separate Warehouse, marked as a Warehouse for Hops, held there for the Benefit of the Persons who had bought them, Thackthwaite v. Cock, 3 Taunt. 487. In Muller v. Meek, 1 M. and S. 335, the Defendant agreed to purchase from the Bankrupt a House, with the Furniture and Stock; the Bankrupt was by the Agreement to remain in Possession three Months without Rent; the Transfer was notorious in the Neighbourhood, the Bankruptcy took place within three Months, and the Case was ruled not to be within the Act. Lord Ellenborough—" It was Part of the Contract that the Bankrupt should remain in Possession during the three Months, therefore during that Period he was in of his own Right as Owner, and not by Permission of the true Owner, and as to his being reputed Owner, the Case states that the Transfer was notorious; no Person was deceived.

 Manors, Lands, Tenements, or Hereditaments, whereof any

Besides reputed Ownership was a Fact which ought to have been found to raise the Question at all.

In Livesay v. Hood, 2 Camp. 83, Lawrence, J. held, that Goods sent to the Bankrupt for Sale or Return were within the Act. In Holroyd v. Gwynne, 2 Taunt. 176, the Bankrupt purchased a Quantity of Standing Timber, and it was agreed, that if he should become Bankrupt or insolvent before Payment, the Seller should be at Liberty to detain the Property. Upon a second Trial the Judge directed the Jury, that if the Defendant had permitted the Bankrupt to exercise such a Controul and Management over the Timber down to the Bankruptcy as to give him the Appearance of being the real Owner, the Case was within the Act, as a Fraud upon the Bankrupt Laws; and upon the Case coming before the Court of Common Pleas, the Counsel for the Seller admitted that the Case of Horn and Baker was too strong to get over. In this Case it seems, as already noticed, to have been most unaccountably overlooked, that the Property in Question was a Part of the Freehold, which in all the Cases upon the Subject, and particularly in Horn v. Baker, is admitted not to be within the Act; and there seems to be Nothing in the Statement of the Case to warrant the Jury in finding a Possession by the Bankrupt, even supposing the Property to have been of a different Description.

Upon an Execution against a Trader in the County of Cumberland, where there are no Bound Bailiffs, the Warrant was directed to two Servants of the Bankrupt, who took Possession of the Stock-in-Trade, but the Shop continued open, and the Business was carried on as usual. Lord Ellenborough said, "How can the Possession of the Servants be adverse to that of their Master?" the Goods were clearly in the Possession, Order, and Disposition of the Bankrupt, when the Bankruptcy happened. Had they delivered the Warrant to a Bound Bailiff, and put him in Possession, all would have been right," Jackson v. Irvin, 2 Camp. 48. I apprehend that this Case was properly decided, agreeably to the Fact of the Bankrupt being allowed to continue in the apparent and ostensible Possession; but I cannot admit, as a general Proposition, that the Possession of the Servant must necessarily be the Possession of the Master, unless it is held expressly in that Character. The Possession of the Servant of A of Goods belonging to B. is not the Possession of A. It is the having the Possession, in the Character of the Servant of A. and under his Controul and Direction, which renders it his Possession, in Point of Law; and there was no absolute Inconsistency in the Sheriff making the Servant of the Bankrupt, as he might have made the Servant of any third Person, his Officer, pro hac vice; as if the Property had consisted of Trinkets, which the Servant had taken into his special Custody under Lock and Key. The Character of Bound Bailiff is not known to the Law as an official Situation.

The stating absolutely that the Possession of the Servant is the Possession of the Master is one of the numerous Instances of the Application of an ambiguous and elliptical Expression, in a Manner contrary to its real and original Import.

The Doctrine, (already alluded to), that the Statute does not affect the Possession of the Bankrupt of personal Property, settled before Marriage, and in the ostensible Possession of the Bankrupt, is established by several Cases. In Haselington v. Gill, 3 T. R. 620, n. the Settlement was of a Number of Cows and the Increase and Produce arising from them, and was held good as against Creditors, not only as to the Cows originally settled, but likewise as to others bought with the Money arising from the Produce of the Sale of the Milk; but the Case did not arise in Bankruptcy. In Jarman v. Woolloton, 3 T. R. 618, the Settlement

Bankrupt is or shall be in any Ways seized of any Estate in Tail, 21 Jac. 1. Cap. 19. A. D. 1623.

was of the Wife's Stock-in-Trade, Household Goods, and other Effects. She at first carried on Business as a Milliner separately from her Husband, who was a Linen Draper at a different Place, but latterly all her Goods were removed to the House of her Husband, and she carried on Business in a separate Apartment there. The Jury found that her Business was not carried on separately, and gave a Verdict for the Assignees, as to the Stock-in-Trade, and for the Trustee in the Settlement, as to the Household Goods; and a Rule for setting aside the Verdict as to the latter was discharged, Buller, J. expressing an Opinion that it bore rather hard against the *Wife* as to the Stock, and that the Weight of Evidence was in her Favour.

In Darby v. Smith, 8 T. R. 82, Household Goods of the Wife were assigned to Trustees, in Trust, to suffer the Husband to enjoy them, on Condition that he should pay for the Children of the Wife £800, by yearly Instalments of £100. The Trustees suffered the Husband to enjoy them, after making Default in some of the Payments, until the Evening before his Bankruptcy, when they put a Man in Possession; and it was ruled, that the Assignees were entitled. Lord Kenyon, after noticing the Length of Time that he had been permitted to retain the Possession, said, "all this while he was in Possession of them, not in autre Droit, but in his own Right, having before contracted for the Purchase of them at a certain Price, payable by Instalments. Then just on the Eve of his Bankruptcy, the Trustees repossessed themselves of the Goods, *by what Authority I know not*, for it cannot be denied that the Bankrupt had acquired some Right in them, by the Part Payments which he had made. This was a *gross Fraud, and cannot take the Case out of the Statute* 21 James." It is difficult to tell on what precise Ground this Case was decided, and perhaps that was not very distinctly attended to in making the Decision, for three several Grounds of Decision are glanced at, without any one of them being particularly relied upon; whether, 1st—on the Ground that, independently of any Question in Bankruptcy, the Trustees had no Right to take the Possession from the Bankrupt; 2d—on the Ground of fraudulent Preference, as arising from some Communication from the Bankrupt; or 3d—on the Ground that, although the Trustees actually took the Possession before the Act of Bankruptcy was committed, the Case was one upon which the Statute attached. Supposing the Decision to have proceeded on the Ground last-mentioned, it is over-ruled in Jones v. Dwyer, 15 E. vide supra.

In Mace v. Cadell, Cowp. 232, it was held, that where a Woman had professed to be married to the Bankrupt, who had the Licence of a Public-house kept by her transferred to him, and continued in Possession, such Possession was a reputed Ownership within the Statute. In this Case, as mentioned in a preceding Part of the present Note, it was first completely established that the Operation of the Clause was not, by Reference to the Preamble, confined to Property which had previously belonged to the Bankrupt.

In Lingham v. Biggs, 1 B. and P. 82, the Bankrupt being the Keeper of a Coffee-House, the Household Furniture was taken in Execution, and sold at a Valuation by the Sheriff to her Brother, who let them to her for four Years, at a Rent, she covenanting not to remove them without his Consent. Being afterwards seized under the Commission, the Case was ruled to fall within the Statute, the Plaintiff, (Trustee for the Brother), declining a new Trial, as to the Fact of the Bankrupt being the reputed Owner. In the Course of his Judgment, Eyre, C. J. made the following Observations:

"Being allowed to have Possession of Goods under Circumstances which gave the Reputation of Ownership brings the Case within the

21 Jac. I. Cap. 19. A. D. 1623. in Possession, Reversion or Remainder, and whereof no Rever-

Statute, and it is fair so to consider them, because every Man who can be said to be the reputed Owner has incidentally the Order and Disposition not indeed between the Parties, but as general Appearance. It is impossible for the World at large to enquire what Accounts may exist between the Parties, general Credit with the World is all, if the Party be the reputed Owner; it imports that he has the Order and Disposition, and that he may sell. Admitting that the Words Order and Disposition, Sale and Alteration, might refer to such Goods only as a Party has in his Shop, and ready to sell to Customers, yet they cannot refer to the actual Sale, as they seem to import, for if the Goods are once sold, they are out of the Power of the Assignees. The Act supposes them to remain in Possession of the Bankrupt, and because they remain there the Assignees are allowed to take them; the Words therefore must not have that absolute Sense which they seem to bear, but must have a Meaning consistent with the End proposed to be attained by the Statute. If a Man be the reputed Owner of Goods, and appear to have the Order and Disposition of them, he must be understood to have taken upon himself the Sale, Order, and Disposition, within the Meaning of this Statute, we must suppose that he has done that which the Act supposes, and certainly to hold a Construction at this Day different from that of all the Cases on this remedial Law could not be justified by the mere Letter of the Act. The Question then comes to this, can Furniture be distinguished from other Goods and Chattles to which the Statute would extend. Now I think it cannot, except so far as it may go to shew that this Bankrupt was not the reputed Owner, did not appear to have, and therefore had not, the Order and Disposition. I think it necessarily follows from her being the reputed Owner, that she will appear to the World to have the Order and Disposition, Sale and Alteration, &c. She must clearly derive a Credit from these Appearances, and consequently, if the Owner allows her to retain the Property, however fair that may be between herself and the Owner, it must be a Fraud upon the Creditors. It has been suggested, that this Doctrine would go to an inconvenient Length; it was said by Way of Instance that no Trader could go into a ready-furnished House to hire Horses on a Job, because Possession would create Reputation of Ownership, and consequently the Furniture and Horses would be liable to be seized. I admit that Possession is always Evidence of Ownership, and with Nothing to oppose it would create Reputation of it, but it is Evidence which may be opposed, and so satisfactorily opposed as to destroy that Reputation. Let us pursue this Idea—a respectable Tradesman, residing in his own House, in London, takes a Journey for two Months to Brighton or some other Sea-port, and hires a ready-furnished House, all the World would say that he was the reputed Owner of the Furniture in the House in London, and not the reputed Owner of that House at Brighton. So as it is notorious that People do not always drive their own Coaches and Horses, Possession in such a Case is only equivocal, and too equivocal to create a Reputation of Ownership, it would therefore be necessary to go into other Evidence, to determine of what Character the Possession was. I have no Apprehension of this Doctrine going to an inconvenient Length; I believe when once it is ascertained whether the Bankrupt was the reputed Owner or not, there would be very little Difficulty in deciding. From that reputed Ownership false Credit arises; from that false Credit arises the Mischief; and to that Mischief the Remedy of the Statute applies.

See the Observations upon some Parts of this Judgment in Mr. Cullen's Bankrupt Law, pa. 295, n.

In the above cited Case of Horn v. Baker, 9 E. 244, Le Blanc, J. said, with Reference to the general Construction of the Statute,

sion or Remainder is or shall be in the King's Majesty, his

"the Question is, whether, under these Circumstances the Bankrupt had the Possession, Order, and Disposition of the Goods, by the Consent of the true Owner? I think they had. For though there are many Exceptions, as in the Case of Factors, Bankers, Lodgers, and others, who are known to have the Goods of other Persons in their Possession, none of which, it is true, are expressly excepted in the Statute; yet the Ground of all the Exceptions has been, that the Possession of such and such Descriptions of Persons did not carry to the Understanding of the World the reputed Ownership. The same Rule might extend to Furniture let with a House, and perhaps even to Furniture let without the House, to be used there where such Lettings are usual.

From these Cases I apprehend it is not to be inferred, that, in Order to take a Case out of the Statute, there should be any extrinsic Reputation or Knowledge in the Neighbourhood, with Respect to the Circumstances of each individual Case, but only that when the Possession is held according to such Circumstances as in their Nature are consistent with any known general Ground of Exception, such Circumstances may be admitted to repel the Reputation of Ownership arising out of the mere Possession.—The Supposition of Mr. J. Le Blanc, as to its being usual to let Furniture without the House, may be applied to the Case of Musical Instruments, the Letting of which to hire is a known familiar Course of Business.

In most of the Cases already considered there has been no Doubt as to the Fact of Possession, and the Matter in Dispute has been the Reputation of Ownership arising out of such Possession.—With Respect to what shall constitute sufficient Possession in a Person claiming adversely to the Commission, in Ryal v. Rowles it was admitted, on all Hands, that in the Case of bulky Goods in a Warehouse, the Delivery of the Key of the Warehouse was sufficient. In Manton v. Moore, 7 T. R. 67, the Engineer of a Canal Company executed a Security to them of Articles purchased by him for the Use of the Canal, and then lying on the Banks, which were their Premises. It was found by an Arbitrator, that the Bankrupt could not derive any false Credit by the Goods remaining where they were, because from their Situation they might naturally be supposed to belong to the Canal Company, or if they could be supposed to belong to the Bankrupt, it must be in his Capacity of Agent to the Company, and to be applied to their Use, and that in Point of Fact the Goods might be said to be in the Possession of the Company, because they were deposited on the Banks of the Canal, which were their Premises; and this Opinion was confirmed by the Court, Lord Kenyon said, "not knowing what other Delivery of the Goods there could have been, I am bound to say that the Possession depended upon the Property of the Goods." Lawrence, J. "what was the Possession of the Bankrupt himself before the Bill of Sale? The Goods were then apparently in the Possession of the Company, because they were lying on their Banks, the Bankrupt had no Possession of the Goods, otherwise than because he had the Property in them; but when he transferred that Property to the Company, the Law referred the Possession to the Company who had the Property, and in whom the sole Possession apparently was before."—In Stoveld v. Hughes, 14 East, 312, Lord Ellenborough said, that the Change of Mark from A to B on Bales of Goods in a Warehouse, by the Direction of the Parties, was clearly held by the House of Lords, in a late Case, to operate as an actual Delivery, and this after three Days' Argument, though it appeared to him, that the Case only required to be stated, in Order to be disposed of at once; and see other Cases ibid, which al-

21 Jac. I. Cap. 19 A. D. 1623.

Heirs and Successors, of the Gift or Provision of his Majesty,

though not arising in Bankruptcy, would in general be applicable to Questions under the Statute, as whatever shews the Existence or Non-Existence of Possession is an Affirmation or Negation of the primary Requisite upon which all other Parts of the Provision are in general founded.

The Case of an Assignment of a Ship at Sea, or of a Cargo with the Delivery of proper Documents, is an established Exception from the Statute, Brown v. Heathcote, 1 Atk. 160, ex-parte Matthews, 2 Ves. 272, Atkinson v. Maling, 2 T. R. 462; but actual Possession must be taken, if the Ship is in Great Britain, Stephens v. Sole, cited 2 Ves. 352, Hull v. Gurney. Cooke's B. L. Mair v. Glennie, 4 M. and S 240; but this is not necessary when the Ship is in a foreign Port, ex-parte Batson, Cooke's B. L. As to Assignments of Part of a Ship, see Gillespy v. Coutts, Ambler, 652, ex-parte Stadgroom, 1 Ves. Junr. 163.

In an early Part of the present Note, it was mentioned, that Choses in Action and other Subjects not susceptible of corporeal Possession are within the Provisions of the Act. To divest the Bankrupt of the apparent Ownership, the Securities, if any, must be delivered over, and Notice must be given to the Debtor, Ryall v. Rowle, 1 Atk. 177. Upon this Principle it was held, that upon an Assignment of the Privilege of an Officer of the East India Company, (which Privilege appears to be a certain Indulgence of private Trade of sending Goods in the Company's Ships, shipped in the Officer's own Name, sold by the Company as his Privilege, and the Money arising from the Sale placed to the Credit of the Officers in the Company's Books), it was necessary either to take actual Possession of the Goods, or to give Notice to the Company of the Assignment, Gordon v. E. I. Compy, 7 T. R. 228.

In Falkner v. Case, 1 Bro. Ch. 125, the Assignment was of a Policy of Insurance in the Hands of the Broker, who had a Lien for the Premiums, and also for his general Balance. It was ruled, that Notice to the Broker was not necessary; Lord Thurlow said, "the Question is, whether the Bankrupt's Interest in this Subject falls under the Words Goods and Chattels in the Act? Whether that Interest resided in the Bankrupt, in any Right of Form or Possession, at the Time of the Bankruptcy? His Right was only to redeem the Broker who had the Possession against the Bankrupt, and the Bankrupt had only a Right to redeem. The Bankrupt when solvent assigned all his Interest to a Stranger. It is objected that he did not deliver Possession, but he had not then the Possession to deliver, he had barely the Right of Redemption; he did therefore it seems all that he could do, assign all his equitable Interest to the Plaintiff. The Statute is to be considered as a Jus positivum, and here it is impossible to charge the Assignee of this Equity with having left the Thing assigned in the Possession of the Bankrupt. But it is argued, that the Assignee should have given Notice to the Broker of his equitable Interest, which would have been publishing to the World that the Property did not belong to the Bankrupt. The first Answer is, that there was not a Scintilla of Property in the Bankrupt; and secondly, supposing Notice had been given, it would have been a Transaction merely between the Assignee and the Broker." There seems to be much Weight in the Query suggested by Mr. Cullen, (B L. 309, n.) whether the Rule with Respect to Notice laid down in Ryal v. Rowles, and Gardner and the E. I. Compy. does not equally apply to the last Case. The Observation, that there was no Property left in the Bankrupt, seems to be the very Ground of the Necessity of Notice, and by the Want of it, it was left in the Bankrupt's Power to redeem and consequently to dispose of the Security himself.

In ex-parte Kensington, 2 V. and B. 79, the Assignment was of £3000 in the 3 per Cents, invested in the Names of the Bankrupt and

21 Jac. I Cap. 19. A. D. 1623.

his Progenitors, his Heirs, or Successors, to any Person or Persons, for the Relief and Benefit of the Creditors of all such Bankrupts; and that all and every such Grants, Bargains, Sales and Conveyances, shall be good and available in the Law to such Person or Persons and their Heirs, against the said Bankrupts, and against all and every the Issues of the Body of such Bankrupts, and against all and every Person and Persons claiming any Estate, Right, Title or Interest, by, from, or under the said Bankrupts, after such Time as such Person shall become bankrupt, and against all and every other Person and Persons whatsoever, whom the said Bankrupt by common Recovery, or other Ways or Means might cut off or debar from any Remainder, Reversion, Rent, Profit, Title or Possibility, into or out of any the said Manors, Lands, Tenements, or Hereditaments. (11)

Conditional Estates granted by the Bankrupt may be redeemed by the Commissioners.

XIII. And be it further enacted, that if any Person that now is or hereafter shall become a Bankrupt, have heretofore granted, conveyed or assured, or shall at any time hereafter grant, convey or assure, any Lands, Tenements, Hereditaments, Goods, Chattels, or other Estate, unto any Person or Persons, upon Condition or Power of Redemption at a Day to come, by Payment of Money or otherwise; that it shall and may be lawful to and for the said Commissioners or the greater Part of them, before the Time of the Performance of such Condition, to assign and appoint under their Hands and Seals such Person or Persons as they shall think fit, to make Tender or Payment of

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of the Drapers' Company, to whom he was Tenant, as a Security for Rent; and the Case was held not to be within the Act—and by Lord Eldon, "the equitable Interest was in different Persons; one being both Trustee and cestui que Trust. I do not apprehend that the Bank would take Notice of an Agreement to transfer. The Bankrupt therefore having only an equitable Interest, and no Power to make an actual Transfer, his equitable Interest passed by the Agreement without the legal Interest, which he could not part with, (but Query could not the Stock have been transferred to the joint Names of the Drapers' Company and the Party having the equitable Assignment?)

One of the numerous Points decided in Ryal v. Rowles was, that the Statute applied to an Assignment of the Share of Partnership Effects by one Partner to another, by way of Security for a Debt unconnected with the Partnership, and that the Assignment being to a Trustee made no Difference.

(10.) This Limitation of Time does not occur in the general Provision, as to the Disposition of Bankrupts' real Estates, by 13 Eliz. c. 7, sec. 2 supra.

(11.) If the Bankrupt has previously mortgaged the Estate, the Assignees of the Bankrupt's Estate hold the Estate discharged of the Mortgage, whereas a Recovery would enure to the Benefit of the Mortgagee, see Beck v. Welch, 1 Wels. 276. But it has been since held, that if the Bankrupt has covenanted for further Assurance, the Assignees must redeem the Mortgage, Pye v. Donbunz, 3 Bro. 595. As there never is a legal Mortgage, without a Covenant for further Assurance, the Distinction does not in Practice seem very important, and an equitable Mortgage is ex vi termini, held to imply an Agreement to do all legal Acts to give Validity to the Assurance.

13 and 14 Car. II. Cap. 24.—A. D. 1662.

Money, or other Performance, according to the Nature of such Condition, as fully as the Bankrupt might have done; and that the said Commissioners or the greater part of them, shall after such Tender, Payment or Performance, have Power to sell and dispose of such Lands, Tenements, Hereditaments, Goods and Chattels, and other Estates so granted, conveyed or assured upon Condition, to and for the Benefit of the Creditors, as fully as they may sell or dispose of any the Estate of the Bankrupt.

The Commission shall be sued forth within five Years.

XIV. Provided further, that no Purchaser for good and valuable Consideration shall be impeached by Virtue of this Act, or any other Act heretofore made against Bankrupts, unless the Commission to prove him or her a Bankrupt be sued forth against such Bankrupt within five Years after he or she shall become a Bankrupt.

Strangers shall take Advantage of this and all other Laws against Bankrupts.

XV. Provided further, and be it enacted by the Authority aforesaid, that this Act and all other Acts of Parliament heretofore made against Bankrupts shall extend to Strangers born, as well Aliens as Denizens, as effectually as to the natural-born Subjects, both to make them subject to the Laws as Bankrupts as also to make them capable of the Benefit or Contribution as Creditors by those Laws.

13 and 14 Car. II. cap. 24. A. D. 1662.—An Act declaratory concerning Bankrupts

Preamble.

WHEREAS divers Noblemen, Gentlemen, and Persons of Quality, no ways bred up to Trade or Merchandize, do oftentimes put in great Stocks of Money into the East-India Company or Guinea Company, and the Fishing Trade, and such other Public Societies, and receive the Proceed of those Stocks sometimes in Ready Monies, sometimes in Commodities, which they usually sell for Money, or exchange again, by which Means the Trade of those Companies is much encouraged, Fishing and Navigation increased, and the public Good of the whole Kingdom very much advanced.

II. Notwithstanding which great Advantage to the Public, there hath been lately some Opinion conceived, that such Persons may and ought to be made subject to the Statutes provided against Bankrupts,

III. For the better declaring and explaining the Law therein, and to the End such Persons may not be discouraged in those honourable Endeavours for promoting Public Undertakings: be it declared and enacted by the King's most excellent Majesty, with the Advice and Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, that no Person or Persons whatsoever, who have adventured, or put in, or who

hereafter shall adventure, or put in any Sum or Sums of Money in the said East India Company, or Guinea Company, or into any Joint Stock, Stocks of Money, by them or either of them made or raised, or to be made and raised, for and towards the maintaining and carrying on the Trade by the said East India Company, or Guinea Company, managed or to be managed, or who have formerly, or shall hereafter adventure or put in any Sum or Sums of Money into any Stock or Stocks of Money, for the managing and carrying on of the said Fishing Trade, or the Trade now called the Royal Fishing Trade, and shall receive and take his or their Part or Dividend of Fish, Goods or Merchandises, in Specie, and shall sell or exchange the same, shall, for or by Reason only of such Adventure of Monies so put into the said East India Company, or Guinea Company, or into any Stock or Stocks for and towards the said Fishing Trade, or for or by Reason only of the Receiving and Taking such Fish, Goods, and Merchandises in Specie, or selling for Money, or exchanging the same again, be adjudged, taken, esteemed, or reputed a Merchant or Trader within any Statute or Statutes for Bankrupts, or be liable to the same.

13 and 14 Car. II. Cap. 24.—A. D. 1662.

No Person for putting in Money to the East India or Guinea Company, or Fishing Trade, shall be esteemed a Trader within the Stat. of Bankrupts.

IV. Provided always, and it is hereby declared, that every Person or Persons, who shall trade, traffick, or merchandise in any other Way or Manner than in the said Royal Fishing Trade, or the Trade managed by the said East India Company, or the Guinea Company as aforesaid, shall, for and by Reason of his and their Trading, Trafficking, and Merchandising, be liable to Commission and Commissions against Bankrupts, as fully, to all Intents and Purposes, and not otherwise, as if this Act had never been made; any Thing in this Act to the Contrary notwithstanding. (1)

Proviso for other Trading.

V. And be it further enacted, that a Verdict and Judgment in Replevin heretofore had or given in the Term of Easter, in the Year one thousand six hundred fifty-three, in the King's Bench, betwixt Phineas Andrews, Plaintiff, Richard Woolward

The Judgment concerning Sir John Wolstenholme made void.

(1.) This refers to their private Trading, in Respect of which they would, without Doubt, be liable to be made Bankrupts. The whole of this Statute is declaratory of the former Law. It reverses the Judgment in the Case of Sir John Wolstenholme as erroneous. Lord Holt was of opinion, that a Member of the Stationers' Company, as such could not be Bankrupt. Lord Raym. 851.

In the 8 and 9 W. 3 c. 20. An Act for the Incorporation of the Governor and Company of the Bank of England, there is a Clause that no Member as such shall be subject to the Bankrupt Law.

Similar Provisions are inserted in many legislative Incorporations, from abundant Caution, in Order to remove the Apprehensions of those who are inclined to become Members.

All Corporations are created for the public Benefit, as well as for private Interest, and from the Authority of this Statute, I think we may safely conclude that no Member of any Corporation as such only, can be a Bankrupt. *Note by Mr. Christian*, and see ex-parte Bell, 15 Ves. 355.

4 & 5 Annæ, Cap. 17.—A. D. 1705.

and William Meggs, Defendants, whereby Sir John Wolstenholme, Knight, and Adventurer in the said East India Company, was adjudged and found liable to a Commission of Bankrupts, only for and by Reason of a Share he had in the Joint Stock of the said Company, and a pretended Selling for Money Part of the Return, which he had in Specie for his said Adventure, shall be, and is hereby declared contrary to Law, and is hereby reversed, and made void and null.

Proviso for Purchasers in the Case of Sir John Wolstenholme.

VI. Provided always, and be it enacted, that no Act, Sale, or Disposition of any of the Lands, Tenements, Hereditaments, Goods, Chattels, Debts, or Credits, of the said Sir John Wolstenholme, or any Distribution of the same, or of any Money heretofore made or done by the Commissioners of Bankrupts, or any Claiming under them, or any of them, by Virtue or Colour of any Commission or Commissions taken out against the said Sir John Wolstenholme, and whereof any Person or Persons is by Virtue or Colour of or under any such Act, Sale, or Disposition, actually seised or possessed, shall be hereby impeached or frustrated, but that the same be enjoyed for and toward Satisfaction of the Debts, for which the the same have been disposed or distributed.

4 and 5 Annæ, Cap. XVII. A. D. 1705.—An Act to prevent Frauds frequently committed by Bankrupts. (1).

(1.) This was a temporary Act, to continue for three Years, and which, after a subsequent Continuance, was permitted to expire, the Object of its principal Provisions being incorporated in subsequent Statutes.

Many of the most important Regulations of the Bankrupt Law, were first introduced by this Statute, particularly the Notice in the Gazette and the three Meetings, the Punishment of Death for not surrendering, or for concealing any Part of the Effects, (which by subsequent Statutes was limited to a Concealment to the Amount of £20), the Provision for taking the Balance in Case of mutual Credit, and what has given an entire new Feature to the Bankrupt Law, the Certificate and Allowance.

The Provision upon these later Points is contained in Section 7, which directs that the Bankrupt conforming shall receive an Allowance of 5 per Cent. not exceeding £200 in the whole, and shall be discharged of all Debts due at the Time of his becoming bankrupt, with a Proviso that the Allowance shall be subject to the Discretion of the Assignees and Commissioners, in Case of the Effects not producing 8s. in the Pound, and a further Proviso, Sec. 18, that no Discovery shall entitle the Bankrupt to the Benefit of the Act, unless the Commissioners shall certify that the Bankrupt hath made Discovery of his Estate and Effects, and in all Things conformed to the Act, and that it does not appear to them that there is any Reason to doubt the Truth of such Discovery. Such Certificate to be allowed by the Lord Chancellor, &c. or by two Judges, to whom the Consideration shall be referred. The Necessity of the Assent of four-fifths of the Creditors in Number and Value was introduced by the subsequent Statute, 5, Anne, c. 22.

No. 7.

NO. 7.
5 Annæ, Cap. 22
A. D. 1706.

5 Annæ, Cap. XXII. A. D. 1706.—An Act to explain and amend an Act of the last Session of Parliament, for preventing Frauds frequently committed by Bankrupts. (1)

No. 8.

10 Annæ, Cap. XV. A. D. 1711.—An Act for repealing a Clause in the Statute made in the twenty-first Year of the Reign of King James the first, intituled *an Act for the further Description of a Bankrupt, and Relief of Creditors against such as shall become Bankrupts, and for inflicting corporal Punishment upon the Bankrupts, in some Special Cases*, which makes Descriptions of Bankrupts; and for the Explanation of the Laws relating to Bankruptcy, in Case of Partnership.

NO. 8.
Preamble.

WHEREAS by an Act made in the one and twentieth Year of the Reign of King James the first, intituled, *An Act for the further Description of a Bankrupt and Relief of Creditors against such as shall become Bankrupts, and for inflicting corporal Punishment upon the Bankrupts in some special Cases*; it is amongst other Things enacted, that all and every Person or Persons using or that should use the Trade of Merchandise, by Way of Bargaining, Exchange, Bartering, Chevisance, or otherwise in gross or by retail, or seeking his or her Living by Buying and Selling, or that should use the Trade or Profession of a Scrivener, receiving other Men's Monies or Estates into his Trust or Custody, who at any Time after the End of the said Session of Parliament, being indebted to any Person or Persons in the Sum of one hundred Pounds or more, should not pay or otherwise compound for the same within

The Act also contains a Provision, which has been since dropped, but which I conceive it would be very expedient to revive, for enabling the Commissioners to summon Persons to be examined respecting Acts of Bankruptcy, and in Case of their Refusal to attend, upon Payment of their Expences, to apprehend them by Warrant, and also to commit, in Case of Refusal to answer, with a Proviso, that no Person shall be obliged to travel above twenty Miles to be examined.—See the Act at large, and Notes, 1 Christian. 59.

(1.) This was a temporary Act, to continue for 2 Years. It limited the Punishment of Death for the concealing Effects to the Amount of £20. It also introduced the Necessity of the Assent of the Creditors to the Certificate, and vacated Securities, given as a Consideration for signing such Certificate—the provisions respecting the Choice of Assignees by the Creditors—for regulating the Amount of the Petitioning Creditor's Debt—for the Bond to the Lord Chancellor, and the Assignment of it, were also first introduced by this Statute.—See, 1 Christian, 72, and Notes.

NO. 8.
10 Anne, Cap. 1
A. D. 1711.

six Months next after the same should grow due, and the Debtor be arrested for the same, or within six Months after an original Writ sued out to recover the said Debt, and Notice thereof given unto him, or left in Writing at his or their Dwelling House or last Place of Abode, or being arrested for the Sum of one hundred Pounds or more of just Debt or Debts, should at any Time after such Arrest, procure his Enlargement by putting in common or hired Bail, should be accounted and adjudged a Bankrupt to all Intents and Purposes, and in the said Cases of Arrest, or getting forth by common or hired Bail, from the Time of his or her said first Arrest: and whereas it is found by Experience, that many and great Mischiefs and Inconveniences have happened, especially of late, to Trade and Credit in general, by Reason of the said Descriptions of a Bankrupt; for Remedy thereof for the future, be it enacted by the Queen's most excellent Majesty, by and and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by Authority of the same, that the said Act, and also all and every other Act and Acts of Parliament whatsoever. so far forth as they relate to the said Descriptions of a Bankrupt, be from and after the twentieth Day of April, in the Year of our Lord one thousand seven hundred and twelve, repealed and made void; and that no Person or Persons whatsoever, within the said Descriptions, or any of them, shall, from and after the said twentieth Day of April, for or by Reason of the same, be taken or adjudged to be within the Statute or Statutes of Bankrupt whatsoever.

After April 20, 1712, the recited Act, &c. so far as relates to the Description of a Bankrupt repealed.

II. Provided nevertheless, and be it enacted by the Authority aforesaid, that no Act, Sale, or Disposition of any the Estate of such Persons within the said Descriptions, or any Distribution of the same, by or under any Commission or Commissions of Bankruptcy, before the said twentieth Day of April, taken out against such Person or Persons, shall be hereby impeached or frustrated, but that the same shall be enjoyed for and towards Satisfaction of the Debts, for which the same have been disposed or distributed.

Not to frustrate any Act, Sale, &c. of the Estates of such Persons by any Commission taken out before the said 20th of April, 4 Anne, c. 17.

III. And whereas a Doubt has arisen upon an Act made in the fourth Year of her Majesty's Reign, intituled, an Act to prevent Frauds frequently committed by Bankrupts, whether the Discharge of a Bankrupt, by Virtue of that Act, should be construed to discharge the Partners of such Bankrupt from the same Debt; be it therefore further enacted and dec[lared] by the Authority aforesaid, that by the Discharge of any [Ban]krupt or Bankrupts, by Force of the said Act, or any other Acts relating to Bankrupts from the Debts by him, her, or them due and owing, at the Time that he, she, or they did become a Bankrupt, shall not be construed, nor was meant or intended to release or discharge any other Person or Persons, who was or were

By the Discharge of a Bankrupt, his Partner shall not be discharged.

Partner or Partners with the said Bankrupt in Trade, at the Time he, she, or they became a Bankrupt, or then stood jointly bound, or had made any joint Contract together with such Bankrupt or Bankrupts, for the same Debt or Debts, from which he was discharged, as aforesaid, but that notwithstanding such Discharge, such Partner and Partners, joint Obligor and Obligors, and joint Contractors with such Bankrupt and Bankrupts, as aforesaid, shall be and stand chargeable with, and liable to pay such Debt and Debts, and to perform such Contracts, as if the said Bankrupt and Bankrupts had never been discharged from the same.

No. 9.

5 Geo. I. Cap. XXIV. A. D. 1718.—An Act for the better preventing Frauds committed by Bankrupts. (1)

No. 10.

7 Georgii I. Cap. XXXI. A. D. 1721.—An Act for explaining and making more effectual the several Acts concerning Bankrupts.

WHEREAS Merchants, and other Traders in Goods, have been very often obliged, and more especially of late Years, to sell and dispose of their Goods and Merchandises to such Persons as have Occasion for the same upon Trust or Credit, and to take Bills, Bonds, Promissory Notes, or other Persons' (2) Securities for their Monies, payable at the end of three, four or six Months, or other future Days of Payment, and the Buyers of such Goods becoming Bankrupts, and Commissions of Bankruptcy being taken out against them, before the Money upon such Bonds, Notes, or other Securities, became payable, it hath been a Question, whether such Persons, giving such Credit on such Securities, should be let in to prove their Debts, or be admitted to have any Dividend or other Benefit by the Commission,

(1) See this Act, which was temporary, at large, 1 Christian, 82. Many of the Provisions are incorporated verbatim in Statute 5 Geo. 2, c. 30, post.

For the Comparison between the respective Statutes, see Christian's Notes, ibid.

(2) In Pattinson v. Bankes, Cowp 540, it was ruled that the Statute extended to Securities for Money payable a future Day generally, and was not confined to those given for the Price of Goods. It was then said by Lord Mansfield, that the Provision in Stat. 5 Geo. 2, c. 30, Sec. 22, corrects the blunder in the Preamble of the Stat. 7 Geo. 1, which, after specifying particular Securities, adds, "or other *Persons'* Securities," which clearly should have been, other *personal* Securities. In a Note to Sarratt v. Austin, 4 Taunt. 206, the Case of Pattinson v. Bankes, is supposed to correct a Clause in the Printing, but the Case itself does not appear to warrant that Intention or to imply that the Error is not in the Act itself. I had not an Opportunity previous to the Sheet being printed off, of consulting Mr Ruffhead's Edition.

NO. 10. 5 Geo. II. Cap. 30 A. D. 1732.

before such Time as such Securities become payable, which hath been a great Discouragement to Trade, and great Prejudice to Credit within this Realm; for Remedy whereof be it enacted and declared by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, that all and every Person and Persons, who have given Credit, or at any Time or Times hereafter shall give Credit, on such Securities as aforesaid, to any Person or Persons, who is, are, or shall become Bankrupts, upon a good and valuable Consideration bona-fide, for any Sum or Sums of Money, or other Matter or Thing whatsoever which is or shall not be due or payable at or before the Time of such Persons becoming Bankrupt, shall be admitted to prove his, her, and their several and respective Bills, Bonds, Notes, or other Securities, Promises or Agreements for the same, in like Manner as if they were made payable presently, and not at a future Day; and shall be entitled unto, and shall have and receive a proportionable Part, Share, and Dividend of such Bankrupt's Estate, in Proportion to the other Creditors of such Bankrupts, deducting only thereout a Rebate of Interest, and discounting such Securities payable at future Times, after the Rate of five Pounds per Centum per Annum, for what he shall so receive, to be computed from the actual Payment thereof to the Time such Debt, Duty, or Sum of Money should or would have become due and payable in and by such Securities, as aforesaid.

Persons taking Bills, Bonds, &c. payable at a future Day for Goods delivered to such as after become bankrupt, shall be admitted to prove their Bills, &c. and be intitled to a proportionable Part of the Bankrupt's Estate.

Discounting such Securities after the Rate of £5 per Cent. for what they receive.

Bankrupts shall be discharged of such Securities.

II. And be it further enacted by the Authority aforesaid, that all and every Person or Persons, who now are or shall become Bankrupts, shall be discharged of and from all and every such Bond, Note, or other Security as aforesaid, and shall have the Benefit of the several Statutes now in Force against Bankrupts, in like Manner, to all Intents and Purposes, as if such Sum of Money had been due and payable before the Time of his becoming a Bankrupt.

No such Creditor shall join in suing forth a Commission until such Debt become due.

III. Provided always, and it is hereby declared, that no such Creditor shall be deemed or taken to be a sufficient Creditor for or in Respect of such Debt, to petition or join in any Petition for the obtaining or suing forth any Commission of Bankruptcy, until such Time as such Debt shall become actually due and payable. (2)

No. 11.

5 Georgii II. Cap. XXX. A. D. 1732.—An Act to prevent the committing of Frauds by Bankrupts.

NO. 11. Preamble.

WHEREAS Commissions of Bankrupt have been issued against several Persons not long before and since the Ex-

(2.) See Note b. 5 G. 2, C. 30, (the next Number) Sec. 22.

NO. 11. 5 Geo. II. Cap. 30. A. D. 1732.

piration of the Statute made in the fifth Year of his late Majesty's Reign, intituled, an Act for the better preventing Frauds committed by Bankrupts, and such Persons have been declared Bankrupts by the Commissioners by such Commissions authorized, and yet several of such Bankrupts, by Reason of the Expiration of the said Statute, have not only refused to surrender themselves to the Commissioners, and to discover and deliver up their Estate and Effects to the said Commissioners for the Benefit of their Creditors, but have carried away and concealed the same in such Manner, that the said Commissioners have not been able to seize the same, to the manifest Wrong and Injury of their Creditors, and to the great Discouragement of Trade; and whereas many evil-minded Persons have, since the Expiration of the said Statute, bought and taken upon Trust and Credit divers great Quantities of Goods, Wares and Merchandises, and have thereby, and by their extravagant Manner of Living and otherwise, contracted great Debts, and having gotten such Goods and Effects into their Custody, have sold or pawned the same for less than the Value thereof, and thereby raised ready Money, and have withdrawn themselves from their usual Places of Abode, with their Effects, into secret Places, in order to oblige their Creditors to accept of such Composition for their respective Debts, as such evil-minded Persons think fit to offer, or have carried away their Effects beyond the Seas, whereby their Creditors have been totally deprived of their Debts; and whereas many Persons have and do daily become Bankrupts, not so much by Reason of Losses and unavoidable Misfortunes, as to the Intent to oblige their Creditors to accept such their unjust Proffers and Compositions, and to defraud and hinder their Creditors of their just Debts; therefore to remedy the said Abuses, and to supply the Defects and Inconveniences of former Laws relating to Bankrupts, be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, that if any Person or Persons, who since the fourteenth Day of May, which was in the Year of our Lord one thousand seven hundred and twenty-nine, hath or have become Bankrupt, or who shall at any Time hereafter during the Continuance of this Act become Bankrupt, within the Intent and Meaning of the several Statutes made and now in Force concerning Bankrupts, or any of them, and against whom a Commission of Bankrupt under the Great Seal of Great Britain hath, since the said fourteenth Day of May, which was in the Year of our Lord one thousand seven hundred and twenty-nine, been awarded and issued out, or shall at any Time hereafter be awarded and issued out, whereupon the Person or Persons against

Bankrupts since 14th May, 1729,

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not surrendering within 42 Notice,

conforming to the Statute,

whom such Commission hath issued or shall issue, hath or have been or shall be declared Bankrupt or Bankrupts, shall not within forty-two Days after Notice thereof in Writing, to be left at the usual Place of Abode of such Person or Persons, or personal Notice, in Case such Person or Persons be then in Prison, and Notice given in the London Gazette, that such Commission or Commissions is, are, or have been issued, and of the Time and Place of a Meeting of the Commissioners therein named, or the major Part of them, surrender him, her, or themselves to the said Commissioners named in the said Commission, or the major Part of them, and sign or subscribe such Surrender, and submit to be examined from Time to Time upon Oath, or being of the People called Quakers, upon the solemn Affirmation by Law appointed for such People, by and before such Commissioners or the major Part of them, by such Commission authorized, and in all things conform to the several Statutes already made and now in Force concerning Bankrupts; and also upon such his, her, or their Examination fully and truly disclose and discover all his, her, or their Effects and Estate real and personal, and how and in what Manner, to whom and upon what Consideration, and at what Time or Times he, she or they have or hath disposed of, assigned, or transferred any of his, her, or their Goods, Wares, Merchandises, Monies or other Estate and Effects (and all Books, Papers and Writings relating thereunto) of which he, she or they was or were possessed, or in or to which he, she or they was or were any Ways interested or intitled, or which any Person or Persons had, or hath or have had in Trust for him, her or them, or for his, her or their Use, at any Time before or after the Issuing of the said Commission, or whereby such Person or Persons, or his, her or their Family or Families, hath or have, or may have or expect any Profit, Possibility of Profit, Benefit or Advantage whatsoever, except only such Part of his, her or their Estate and Effects, as shall have been really and bona fide before sold or disposed of in the Way of his, her or their Trade and Dealings; and except such Sums of Money as shall have been laid out in the ordinary Expence of his, her or their Family or Families; and also upon such Examination deliver up unto the said Commissioners by the said Commission authorized, or the major Part of them, all such Part of his, her or their the said Bankrupt's Goods, Wares, Merchandises, Money, Estate and Effects, and all Books, Papers and Writings relating thereunto, as at the Time of such Examination shall be in his, her or their Possession, Custody or Power, (his, her or their necessary Wearing Apparel (1) and

(1.) The Assignees were ordered to deliver up Wearing Apparel to the Bankrupt, the L. C. declining to determine on Affidavit whether it was necessary or not, the Bankrupt being allowed to determine that at his peril, ex-parte Ross, 1 Rose 57.

the necessary Wearing Apparel of the Wife and Children of such Bankrupt only excepted) then he, she or they the said Bankrupt or Bankrupts, in Case (2) of any Default and wilful Omission in not surrendering and submitting to be examined as aforesaid, or in Case he, she or they shall remove, conceal or embezzle any Part of such his, her or their Estate real or personal, to the Value of twenty Pounds, or any Books of Account, Papers or Writings relating thereto, with an Intent to defraud his, her or their Creditors, (and being thereof lawfully convicted by Indictment (3) or Information) shall be

NO. II. 5 Geo. II. c.30 A.D.

or embezzling Goods to the Value of £20, guilty of Felony.

(2.) It is observable that this very important Clause is decidedly imperfect in grammatical Construction, and that a great Part of it can have no legal Operation. The Enactment is, that if any Bankrupt shall not (*a*) surrender and submit (*b*) to be examined, and upon such Examination (*c*) make such Disclosure as is particularly specified, and (*d*) upon such Examination deliver up all his Effects, then the Bankrupt not surrendering and submitting to be examined, or removing, concealing, or embezzling, any Part of his Estate, to the Value of £20, or any Books, shall be guilty of Felony without Benefit of Clergy. With Respect to not making the Disclosure required, or not delivering up the Effects at the Time of the Examination, the Sentence is as defective as if it had stood alone in the following Terms:—"If any Bankrupt shall not make the Disclosure hereby directed, or shall not deliver up his Effects," without any further Addition as to the Consequence of such Default. The preceding Statutes 4 and 5 Anne. c. 17, Sec. 1, 5 Geo. 1. c. 24, Sec. 1, from which the first Part of the Clause is almost literally copied, are not open to this Observation, as they enact generally that the Bankrupt in Case of any wilful Default or Omission *in any of the Premises* shall be guilty of Felony without Benefit of Clergy.

(3.) In all the printed Editions of the Statutes previous to Bullock's Case, 1 Taunt. 71, the Word *Judgment* was inserted in this Place instead of *Indictment*, and upon the Supposition of such being the correct Text, several judicious Observations are made in Green's Bankrupt Law, 208, but upon Examination of the Parliament Roll the Word was found to be Indictment. The Words "Indictment or Information" occur in the preceding Statutes, 4 and 5 Anne, 5 Geo. 1. but no Instance ever occurred of the Trial of a Felony upon Information.

In Bullock's Case, 1 Taunt. 71, the following Objections were made upon a Prosecution under this Act, and disallowed.—1. That the Commission was alleged to be under the Great Seal of Great Britain, and not under the Great Seal of the United Kingdom. 2dly. That it was proved that an Act of Bankruptcy had been committed previous to the contracting of the Petitioning Creditor's Debt.—3d. That the Commissioners had declared the Prisoner a Bankrupt upon the Evidence of a Person who had afterwards proved a Debt.—4th. That the Commission was on a treble sixpenny Stamp, whereas a different Stamp was requisite. A Petition was afterwards presented by the Bankrupt to the Lord Chancellor, to supersede the Commission, but it was held that an attainted Person could not be heard in a Court of Justice except for the direct Purpose of reversing the Attainder, ex-parte Bullock, 14 Vesey, 452.

In ex-parte Wood, 1 Atk. 222, Lord Hardwicke mentioned, that Lord Macclesfield had, in more Instances than one, superseded Commissions where the Bankrupt had not surrendered in Time, if it appeared that there was no Intention to defraud, and that the Absence prevailed rather from Ignorance than Accident. Upon

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Goods of Bank. ... deemed to go to the Creditors.

deemed and adjudged to be guilty of Felony, and shall suffer as Felons without Benefit of Clergy, or the Benefit of any Statute made in Relation to Felons; and in such Cases such Felon's Goods and Estate shall go and be divided among the Creditors seeking Relief under such Commission; any Law, Usage, or Custom to the Contrary thereof in any wise notwithstanding.

Number and Duration of Sit-

II. Provided always, and be it enacted by the Authority aforesaid, that the said Commissioners, authorized as aforesaid, shall appoint within the said forty-two Days so appointed as aforesaid for the Bankrupt to surrender and conform as aforesaid not less than three several Meetings for the Purposes aforesaid, the last of which shall be on the forty-second Day hereby limited for such Bankrupt's Appearance, (except on Commissions already issued since the said fourteenth Day of May, one thousand seven hundred and twenty-nine, where the Person or Persons against whom such Commission issued has or have before surrendered and submitted to be examined; in which Case the said Commissioners, authorised as aforesaid, shall appoint only one Sitting more for the Purposes aforesaid, unless the Assignee or Assignees of the Estate of such Bankrupt shall think more Sittings necessary, and desire the Same), and three Weeks' (4) Notice at least shall be given in the London Gazette of the Time and Place of such Meetings.

this Mr. Christian observes, that a Jury under the Direction of a Judge would seem quite as competent to determine upon the Guilt or Innocence of the Bankrupt as the Lord Chancellor; and if a Bankrupt had committed a capital Crime, it is quite unintelligible and inexplicable how the Prosecution could be stopped by any Authority less than a Pardon from the Crown.

The Unintelligibility, which is here applied to a particular Subject, may perhaps equally affect a great Part of the Jurisdiction which has been assumed by the Great Seal in Cases of Bankruptcy; as to which see Let. Rom. Sec.

As no Instance has yet occurred of a capital Punishment, or, I believe of capital Conviction, for the mere Omission to surrender, it may be eligible to consider how far it is desirable that such a Consesequence shall continue a Part of the Law.

(4.) It has been taken for granted that the Direction for giving three Weeks' Notice, only applied to Commissions which had issued before the Act, but the fair Construction of the Act itself appears to be different, for it directs that the Commissioners shall appoint not less than three *Meetings*, (except on Commissions already issued, in which Case the Commissioners should appoint only one *Sitting* unless the Assignees should think more *Sittings* necessary,) and three Weeks' Notice shall be given of the Time and Place of such *Meetings*. The Parenthesis is, of Course, not inserted in the Act, but seems properly to be introduced, according to the Punctuation of this Note, the Term Meetings, being applied to Commissions generally, and Sittings to the Case referred to in the Exceptions, although perhaps the most reasonable Construction would have been to have considered the Terms as synonimous, and the Direction at the End of the Section, as embracing both the one Description of Commissions and the other. It is clear

NO II.
5 Geo. II Cap. 30, A. D. 1732.
Lord Chancellor may enlarge the Time for surrendering

III Provided always, and it is hereby declared and enacted by the Authority aforesaid, that it shall and may be lawful to and for the Lord Chancellor or Lord Keeper, or Commissioners for the Custody of the Great Seal of Great Britain for the Time being, to enlarge the Time for such Person or Persons surrendering him, her or themselves, and disclosing and discovering his, her or their Estate and Effects as aforesaid, as the said Lord Chancellor, Lord Keeper or such Commissioners shall think fit, not exceeding fifty Days, to be computed from the End of the said forty-two Days, so as such Order for enlarging the Time be made by the said Lord Chancellor, Lord Keeper or such Commissioners six Days at least before the Time on which such Person or Persons was or were so to surrender him, her or themselves, and make such Discovery as aforesaid. (5)

that much Abuse may arise from allowing a Discretion to appoint the Meetings without such intermediate Notice, as may give all Persons interested in opposing Proofs or voting in the Choice of Assignees, a reasonable Opportunity to attend and to make the requisite previous Enquiries, and although the Abuse, if clearly shewn, would be corrected by the Authority of the Great Seal, the Facility of committing Abuses which cannot be distinctly brought Home, and the Expence and Inconvenience attending Petitions, by Individuals having only a general Interest in the Subject, seem to render it desirable that a proper Interval between the Notice and the Meetings should be established by positive Authority.

The Construction of the Act which requires a Notice of three Weeks, is acted upon in some Parts of the Country, especially at Liverpool; but it has been so generally disregarded that there is no Probability of its being now assented to as imperative on the Commissioners. When the Commissioners appointed the Meetings on three successive Days, the Lord Chancellor expressed his Disapprobation, and ordered them to appoint two other Meetings, that the Assignees might have an Opportunity of examining the Accounts; ex-parte Christian, 1 Christian, 126.

(5) The Application must be either by the Bankrupt or the Assignees—It is granted of course. The Time to which the Enlargement is made may be often attended with serious Inconvenience to the Commissioners, and it would seem more eligible to allow them a Discretion within certain Limits; see Letter, Rom. Sec. 13

Where a Bankrupt has omitted to surrender according to the Act, it is usual for the Lord Chancellor, upon his Petition stating the Reasons which prevented such Surrender, to direct that the Commissioners shall appoint a Meeting to accept his Surrender and to proceed in the Examination; see ex-parte Rogers, Ambler 307. Lord Eldon has observed upon this Practice, that the Order has no other Effect than as an Authority to take the Examination, and as a Sort of Record that the Lord Chancellor does not think it fit that the Bankrupt should be capitally prosecuted, and that the Commissioners are not bound to let him surrender; see Anon, 15 Ves. 1; ex-parte Jackson, 15 Vesey, 116 Mr. Christian observes, in a Note upon this Subject to Section 2 of this Act, that it appears from the 7th and 10th Sections and from the Form of the Certificate, that the Bankrupt cannot be entitled to his Allowance or Certificate unless he has surrendered within the limited Time.

This I apprehend to be the clear Law, but I much doubt if it is always sufficiently attended to in Practice. I remember many Years

NO. 11.
5 Geo. II. Cap. 30.
A. D. 1732.
Books of Accounts to be delivered to the Assignees on Oath.

IV. And be it further enacted by the Authority aforesaid, that every such Bankrupt or Bankrupts as aforesaid, after any Assignee or Assignees of his, her or their Estate and Effects shall be chosen and appointed, as herein after mentioned, shall be and is and are hereby required forthwith to deliver up upon Oath, or (one of the People called Quakers) upon solemn Affirmation before one of the Masters of the High Court of Chancery, or before any Justice of the Peace within his respective Jurisdiction, which Oath or Affirmation they are hereby impowered to administer, unto such Assignee or Assignees all his, her, or their Books of Accounts, Papers and Writings not seized by the Messenger of the said Commission, or not before delivered up to the Commissioners, or the major Part of them, and then in his, her or their Custody or Power, and discover such as are in the Custody or Power of any other Person or Persons, that any ways relate to or concern his, her or their Estate or Effects; and all and every such Bankrupt or Bankrupts, not in Prison or Custody, shall at all Times after such Surrender as aforesaid be at Liberty, and is and are hereby required to attend such Assignee or Assignees upon every reasonable Notice in Writing for that Purpose given by such Assignee or Assignees unto such Bankrupt or Bankrupts, or left for him, her or them at his, her or their House or Place of Abode, in order to assist, and shall assist such Assignee or Assignees in making out the Accounts of the said Bankrupt's Estate and Effects.

Bankrupt to attend Assignees

V. And be it further enacted by the Authority aforesaid, that all and every Bankrupt or Bankrupts having surrendered as aforesaid shall, at all seasonable Times before the Expiration of the said forty-two Days, or such further Time as shall be allowed to such Bankrupts to finish his, her or their Examination, be at Liberty to inspect his, her or their Books, Papers and Writings in the Presence of such Assignee or Assignees, or some Person to be appointed by such Assignee or Assignees for that Purpose, and to take and bring with him, her or them, for his, her or their Assistance, such Persons as he, she or they shall think fit, not exceeding two Persons at any

Inspect Accounts

ago signing as a Commissioner a Certificate stating the special Facts, with a written Direction that it should not pass until particularly shewn to the Lord Chancellor. The Officers in the Bankrupt Office refused to receive the Certificate with this Direction, and said that, it would have passed of Course. A Certificate stating the Fact of a subsequent Surrender, by Order of the Lord Chancellor, would seem clearly insufficient to entitle the Bankrupt to the Benefits of the Law, but, perhaps, if allowed to pass the Office, the Objection would escape Attention, as the Advertisements in the Papers, and the Entry of the Officer, would, probably, not raise the Objection in such a Manner as to attract Observation. It would be manifestly improper for the Commissioners to certify, contrary to the Fact, that a Surrender had been made within the Time allowed by Law.

one Time, and to make out such Extracts and Copies from thence, as he, she or they shall think fit, the better to enable him, her and them to make a full and true Discovery and Disclosure of his, her or their Estate and Effects; and in Order thereto the said Bankrupt or Bankrupts shall be free from all Arrests, Restraint or Imprisonment of any of his, her or their Creditors in coming to surrender, (6) and from the actual Surrender (7) of such Bankrupt to the said Commissioners, for and during the said forty-two Days, or such further Time as shall be allowed to such Bankrupt or Bankrupts, for finishing his, her or their Examinations as aforesaid, (8) provided such Bankrupt was not in Cus-

NO. 11. Geo. II. Cap. A. D. 1732.

nd to free fr. restraint duri Examination, i et in Custody i

(6.) If the Bankrupt return from Abroad with Intent to surrender, and is arrested before he can be conveniently surrendered, he is entitled to be discharged; Darby v. Baughan, 5 T. R. 209. So where a Bankrupt was arrested in London, on his Way from Bath to Liverpool, when it appeared that he was bona fide on the Way to his Examination; Ogle's Case, 11 Vesey, 556. Secus, where a Bankrupt returned from Abroad to surrender, on the forty-second Day, but finding the Time enlarged, did not mean to surrender till the enlarged Day; Kenyon v. Solomon, Cowp. 156. Where the Bankrupt before he received his Summons, delivered his Keys and Effects to the Messenger, and promised to submit to the Commissioners, and was arrested at his own House, on the first Day appointed for his Surrender, the Lord Chancellor thought, as he had done all that he then could do in Compliance with the Act, he was entitled to be discharged; ex-parte De Fries, Davies, 163. But Query, whether the Words of the Act will admit of so extended a Construction.

(7.) There has been a considerable Diversity both of Opinions and Practice, as to receiving the Surrender of the Bankrupt before the Time of the public Meetings appointed in the Gazette, but in ex parte Wood, 18 Vesey 1, 1 Rose, 46, the Bankrupt having been arrested after such Surrender, was liberated, and the Officer was ordered to pay the Costs. The Lord Chancellor observing that, from the Analogies of the Cases and by the Spirit, though not by the Terms, of the Act, the Bankrupt was entitled to the Order. The Practice of admitting such Surrenders has, since this Case, been general. See some Observations upon the Subject in Mr. Christian's Notes on this Section.

(8.) The Protection from Arrest extends to the End of the forty-second Day, although the Examination may have been previously finished, ex-parte Dewdney, 7 Vesey, 317; so to the whole of the last Day, for which further Time is allowed by the Lord Chancellor; Davis v. Trotter, 8 T. R. 476. If after a Surrender, within the forty-two Days, the Commissioners adjourn the Time for finishing the Examination, the Bankrupt is protected during such Adjournment; Davies v. Trotter, S. C. although the Commissioners have neglected to indorse the Adjournment on the Summons. Prit's Case, 3 V. and B. 23. A Bankrupt has no Protection during the Time limited for his Examination upon an Order, after omitting to surrender in proper Time: Anon 15 Ves. 1. He is protected against an Attachment for Non-payment of Money, ex-parte Parker, 3 Ves. 554; not against an Extent, except during his bona-fide Attendance on the Commissioners, ex-parte Temble, 2 Rose, 22; nor against Surrender by his Bail, ex-parte Gibbons, 1 Atk. 238; nor against being re-taken by the Gaoler in Case of an Escape, ex-parte Johnson, 14 Ves. 36. The Privilege, when it exists, extends to Arrests for Debts not proveable under the Commission, Darby v. Baughan, 5 T. R. 209. There

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tody at the Time of such Surrender and Submission to be examined; and in Case such Bankrupt shall be arrested for Debt, or on any Escape Warrant, coming to surrender him or herself to the said Commissioners, or after his or her Surrender shall be so arrested within the Time before mentioned, that then, on producing such Summons or Notice under the Hands of the said Commissoners, Assignee, or Assignees, to the Officer who shall arrest him, her or them, and making it appear to such Officer, that such Notice or Summons is signed by the said Commissioners, or the major Part of them, or such Assignee or Assignees, and giving such Officer a Copy thereof, shall be immediately discharged. And in Case any Officer shall detain such Bankrupt or Bankrupts (after he, she or they shall have shewn such Notice or Summons to him, and made it appear it was signed as aforesaid) in his Custody, such Officer shall forfeit and pay to such Bankrupt, for his own Use, the Sum of five Pounds for every Day such Officer shall detain such Bankrupt, to be recovered by Action of Debt in any of his Majesty's Courts of Record at Westminster, in the Name or Names of such Bankrupt or Bankrupts with full Costs of Suit.

Penalty on Officer detaining Bankrupts.

Bankrupts in Custody to be brought before Commissioners at the Creditors' Expence, if in Execution, Commissioners to attend them in Prison.

VI. Provided always, and be it further enacted, that in Case any Bankrupt be in Prison, or in Custody at the Time of issuing of the said Commission as aforesaid, and is willing to surrender and submit to be examined according to the Directions of this Act, and can be brought before the said Commissioners and Creditors for that Purpose, the Expence thereof shall be paid out of the said Bankrupt's Estate and Effects: but in Case such Bankrupt is in Execution, or cannot be brought before the Commissioners, that then the Acting Commissioners shall from Time to Time attend the said Bankrupt in Prison or Custody, and take his or her Discovery, as in other Cases: and the Assignees of the said Estate shall have Power, and are hereby required to appoint one or more Persons to attend such Bankrupt,

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There are other Cases in which the Bankrupt or other Persons connected with the Commission are protected from Arrest, according to the general rule of Law as attending Courts of Justice, eundo morando et redeundo, as in all Cases when it is the Duty of the Bankrupt to attend his Commissioners, Arding v. Flower, 1 T. R. 534; ex-parte Ross, 1 Rose, 260. A Bankrupt attending the Hearing of a Petition for leave to surrender after the Time expired, ex-parte Jackson, 15 Ves. 117. All Persons attending under Commissioners' Summons are protected; so is a Creditor attending to prove a Debt, Semble, ex-parte King, 7 Ves. 316, Kinder v. Williams, 4 T. R. 378, ruled ex-parte List, 2 Rose, 24. In ex-parte Russel, 1 Rose, 278, it was ruled that a Bankrupt was, during his actual Attendance, entitled to be discharged from an Arrest upon an immediate Extent. Where the first Arrest is wrong, all other Writs are inoperative as Detainers, ex-parte Ross, 1 Rose, 260.

For the Distinction between the Cases in which the Application may be on Motion, and those in which it is necessary to apply by Petition, see 1 Rose, 230, Anon.

being in Prison or in Custody as aforesaid, from Time to Time, and to produce to him or her, his or her Books, Papers, and Writings, in order to prepare his or her last Discovery and Examination according to the Directions before mentioned: a Copy whereof the Assignees of the said Estate shall apply for, and the said Bankrupt shall deliver to them or their Order, ten Days at least before such last Examination. (9)

Allowance to Bankrupts.

VII. And be it further enacted by the Authority aforesaid, that all and every Person and Persons so become or to become Bankrupts as aforesaid, who shall within the Time limited by this Act surrender him, her or themselves to the acting Commissioners named and authorized in or by any Commission of Bankrupt awarded or to be awarded against him, her or them, and in all Things conform, as in and by this Act is directed, shall be allowed (10) the Sum of five Pounds per Cen-

(9) By 19 Geo. 3, c. 121, Sec. 13, Bankrupts in Custody may be brought before the Commissioners at the Time of their last Examination, although charged in Execution.

(10.) The Allowance was first introduced by Statute 4, c. 5 Anne, c. 17, S. 7, by which Act it was fixed at 5 per Cent. so as not to exceed £200 in the whole, with a Priviso that, in Case of the Effects not producing 8s. in the Pound, the Bankrupt should only have so much as the Commissioners and Assignees should think fit to allow, and the same Provision is contained in 5 Geo. 1, c. 24. By Sec. 10 of this Act, the Bankrupt is not entitled to his Allowance, unless he has obtained his Certificate. If he obtains his Certificate and dies before he has received his Allowance, it is a vested Interest, and passes to his Representatives, ex-parte Trapp, 1 Atk. 208, ex-parte Elliott, 1 Atk. 209. If the Certificate is not obtained until after the Time of the final Dividend being paid, the Bankrupt has not any Remedy, Groome v. Potts, 6 T. R. 543.

The Bankrupt is not entitled to his Allowance until a final Dividend, as until that Time, other Creditors may come in, ex-parte Stiles, 1 Atk. 208. A Bankrupt under a second Dividend is not entitled to his Allowance, unless the Dividend amount to 15s. in the Pound, ex-parte Gregg, 6 Ves 258. The Allowance is preferred to Interest in Case of a Surplus, ex-parte Morris, 3 Bro. 72. No Rule is settled, in Case of Creditors upon a final Dividend receiving considerably more than 10s. in the Pound, and subsequent Creditors less. Mr Christian suggests, apparently with Justice, that the Allowance should be according to such Rate as the Effects would be sufficient to pay, if equally divided. A Bankrupt is not bound to refund his Allowance, if regularly ordered, Russel v. Russel, 1 Bro. 269. A Bankrupt having joint and separate Debts and Effects, is entitled only to one Allowance, ex-parte Bate, 1 Bro, 455.

In the same Case, where the separate Effects, of the respective Partners having been sufficient to pay their separate Debts, with a Surplus, of which the Amount contributed by the Estate of one Partner, considerably exceeded that contributed by the separate Estate of the other, whereby the joint Creditors received more than 15s. in the Pound, Lord Thurlow held, that they were entitled to an Allowance of £300, to be apportioned according to the Amount which the Excess of their separate Estates respectively contributed to the Payment of the joint Debts. Where joint Creditors, under a separate Commission, received 18s. in the Pound on the joint Effects, and separate Cre-

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tum out of the neat Produce of all the Estate that shall be recovered in and received; which shall be paid unto him, her or them by the said Assignee or Assignees of the said Commissioners, in Case the neat Produce of the said Estate, after such Allowance made, shall be sufficient to pay the Creditors of the said Bankrupt, who have proved their Debts under the said Commission, the Sum of ten Shillings in the Pound, and so as the said five Pounds Centum shall not amount in the whole to above the Sum of two hundred Pounds. And in Case the neat Produce of the said Estate shall, over and above the Allowance hereafter mentioned, be sufficient to pay the said Creditors the Sum of twelve Shillings and Sixpence in the Pound for their respective Debts, that then all and every Person or Persons so conforming shall be allowed the Sum of seven Pounds ten Shillings per Centum out of such neat Produce, to be paid by such Assignee or Assignees, so as such seven Pounds ten Shillings per Centum, shall not amount in the whole to above the Sum of two hundred and fifty Pounds. And in Case the neat Produce of the said Estate shall, over and above the Allowance hereafter made, be sufficient to pay the said Creditors the Sum of fifteen Shillings in the Pound for their respective Debts, that then all and every such Person and Persons so conforming shall be allowed the Sum of ten Pounds per Centum out of such neat Produce, to be paid by the Assignee or Assignees, so as such ten Pounds per Centum shall not amount in the whole to above the Sum of three hundred Pounds; and every such Bankrupt shall be discharged from all Debts by him, her or them due or owing at the Time that she, he or they did become Bankrupt. And in Case any such Bankrupt shall afterwards be arrested, prosecuted or impleaded for any Debt (11) due before

Bankrupts discharged freed from Debts.

ditors 2s. on the separate Effects, Lord Eldon held, that the Bankrupt was not entitled to any Allowance, observing, that formerly in such Case a Bill would have been necessary, that the Order for keeping distinct Accounts had superseded the Necessity of a Bill, but that that was a mere Mode of Arrangement, which could not give the Bankrupt other Privileges than he would have been entitled to if his joint Property had been distributed under the Direction of a Court of Equity, ex parte Farlow, 1 Rose, 421, and in ex-parte Holmes, 2 Rose, 95, his Lordship held, that a Bankrupt paying twenty Shillings out of his separate Estate, was not entitled to his Allowance, against the Right of his joint Creditors to the Surplus; see the Observations of Mr. Christian respecting the Cases upon Allowance, where there are joint and separate Estates, Vol. 1, 158, Vol. 2, 711, Vol. 3, 289, 415.

(11.) As the Right of the Creditors to prove, and the Discharge of the Bankrupt by Reason of his Conformity, are in general commensurate, this has appeared to be the most proper Place to introduce such View, as the Nature of the Work requires, of the Law relating to these respective Subjects. The particular Cases connected with the Time of allowing the Certificate will be referred to under Section 10 infra. The Right to contingent Debts, or those payable at a future Day under Sec. and see 49 Geo. 3, c. 121, Sec. 9. The Cases of Bottomry and Policies of Insurance, as affected by 19 Geo. 2, ch. 32, will be referred

such Time as he, she or they became Bankrupt, such Bankrupt

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to in the Notes to that Statute, and see 49 Geo. 3, c. 121, Sec. 16. The Cases of Sureties and Creditors by Annuity, will be referred to under 49 Geo. 3, c. 121, Sec. 8, 17; and that of Lessees chargeable by Means of their Covenants, under the same Statute, Sec. 19. The Case of a Creditor having a Security, and the Right of proving against several Parties for the same Demand, have been referred to under Stat. 21 James 1, c. 19, Sec. 9.

Although the Right to prove and the Benefit of the Discharge, are, in general, co-extensive, they are not universally so, there being several Cases in which, independently of the Bankrupt Law, a Plaintiff has a Right to proceed for Damages, on Account of a Tort or the Non-performance of an Engagement, or at his Election to consider the Money received as a Debt, and sue for it accordingly; as in Case of a Sale of Goods under an Execution afterwards set aside, Dict. Utterson v. Vernon, 3 T. R. 548, of not delivering Goods which had been paid for, according to Agreement, ibid. discounting a Bill delivered for the Purpose of receiving the Money when due and embezzling the Money received, Parker v. Norton, 6 T. R. 695, pledging Goods deposited as a Security, Johnson v. Spiller, Doug. 167.

In these Cases the Right of Election is not varied by the Commission, and the Party may either come in as a Creditor, or may proceed for Damages on Account of the Tort or the Non-performance of the Contract. On the other hand, Costs of Suit (which are regarded as collateral to the Debt) are in many Cases discharged by the Certificate, although not proveable under the Commission; and it seems to be now settled that there can be no Proof for Costs under the Commission, unless the Costs are taxed and Judgment signed before the Bankruptcy, although the Bankrupt is discharged, in Case the Action in which the Costs were incurred was for a Debt proveable.—See ex-parte Hill, 11 Vesey, 646; Rex v. Davis, 9 East, 318; Scott v. Ambrose, 3 M. and S. 326, in which the Bankrupt was discharged from the Costs of a Writ of Error brought by him upon a Judgment recovered after the Bankruptcy for a Debt due before.—In Miles v. Williams, 1 P. W. 249, it was held that the separate Debt of the Wife was discharged by the Certificate of the Husband.

The Right of Proof and the consequent Discharge are not confined to legal Debts, but extend to Cases of equitable Demands, as in the Case of an Executor or Trustee having Money in his Hands, Walcott v. Hall, 2 Bro. 305. So where Trustees improperly sold Stock, and the same Trustee afterwards became a Bankrupt, the Stocks being risen, it was held that the Persons interested might prove for the Price at the Date of the Commission, ex-parte Shakeshaft, 3 Bro. 196 And where an Administratrix improperly continued the Property in Trade with the Partners of the Estate, Lord Eldon ruled that the next of Kin might elect to prove against her separate Estate or the joint Estate of the Partnership, ex-parte Watson, 2 V. and B. 414.

Money improperly lent by an Executor contrary to his Trust is a Debt proveable under his Commission, Langston v Olivant, Cowp. 33.

In ex-parte Gardner, 11 Ves 49, Lord Eldon allowed Trustees to prove a Sum of Money which the Bankrupt represented himself to be possessed of and agreed to settle upon his Marriage.

It is perfectly familiar to allow the Partners of a Bankrupt to prove the Balance ascertained to to be due upon an unliquidated Account.

In Wall v. Atkinson, 2 Rose, 196, a Defendant in Custody previous to his Bankruptcy upon an Attachment for Non-payment of Money, pursuant to an Order of the Court of Chancery, was discharged on his Certificate.

In ex-parte Child, 1 Atk, 111, Lord Hardwicke admitted a Pa-

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shall be discharged upon common Bail, and shall and may plead

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rishioner to prove the Money in the Hands of a Collector of Taxes. Lord Thurlow in ex-parte Muggeridge, Co. B. L. allowed the Proof by one Collector against another. In Rex v. Egginton, 1 T. R. 369, the Court of B. R. refused to discharge a Bankrupt on his Certificate, committed for Non-payment of Money as an Overseer, received before his Bankruptcy, as he had until the following Easter to account. But in ex-parte Exleigh, 6 Ves. 811, Lord Eldon disapproved of this Decision, and allowed a Parishioner to prove. Mr. Christian states, that it is now common for the Officers of the Crown to prove a Debt due to the Crown for Taxes. It is, however, very clear that the Right of the Crown is not affected by the Certificate.

When an Engagement is entered into by Bond, with a Penalty which is forfeited before the Bankruptcy, the Courts have adopted the Penalty as a Debt, so far as to let in the Creditor to prove according to the Equity of the Case, and to give the Bankrupt the Benefit of his Certificate, as in Cases of Annuities, replacing or settling Stock, and other Engagements. See ex-parte Rowlatt, 2 Rose, 416, and Cases there cited; see also Notes to Sec. post 19 Geo. 3, c. 121 § 17; ex-parte Winchester, 1 Atk. 116; Hodgson v. Bell, 7 T. R. 197. In Boutflower v. Coates, Cowp, 25, it was ruled that a Bail Bond forfeited before the Bankruptcy was discharged by the Certificate. It would seem to follow, that a Creditor upon such Bond is entitled to prove.

With Respect to the Engagement of replacing or investing Stock, if a Party has received a Sum of Money as a Consideration for entering into such Engagement, and the Engagement has not been performed, the Party in whose Favour it is made may elect to treat the Money as paid without Consideration, or upon a Consideration which has failed, and as such received for his Use, and consequently prove it under his Commission: as to the Case of an Engagement to replace Stock in the Performance of which there has been no Default previous to the Commission, see Notes to Sec. 22 post.

With Respect to the general Effect of such an Engagement, Lord Eldon in ex-parte Mare, 8 Ves 336, said, there is no Doubt under an Agreement to replace Stock upon Demand, if the Demand is made before the Bankruptcy, the Price of the Stock may be proved, and in ex-parte Conning, 9 Ves. 115, a Proof was allowed upon an Agreement, to replace Stock within a given Time, and to pay the Dividends in the mean Time. So in Case of a Default upon Request, ex-parte Campbell, 16 Ves. 244.

Upon Covenants merely sounding in Damages, or in the Obligation of specific Performance, there cannot be any Proof; as in the Case of a Covenant to build Houses, Bannister v. Scott, 6 T. R. 419; to settle Lands of a given Value, within seven Years after Marriage, ex-parte Mare, 8 Ves. 335. Upon a Covenant that the Party had a Right to sell a Ship, Hammond v. Toulman, 7 T. R. 612. But upon an Agreement by Marriage Settlement to settle £40 a Year upon the Wife in Case she survived, and that the Dividends of a Sum of Money to be invested in the 3 per Cents. should in the mean Time be received by the Husband for Life, with a Provision in Favour of Issue, as to the Principal, Lord Eldon allowed a Proof of £800, as being a Sum which would have produced an Annuity of £40, ex parte Granger, 10 Vesey, 351.

Upon Cases of Tort sounding merely in Damages, it is clear there can be no Proof as a Debt. It is agreed, that if an Action has been brought, and final Judgment obtained before the Bankruptcy, such Judgment amounts to a proveable Debt. In Longford v. Ellis, cited H. Bl. 29 Willes, Ch. J. said it was sufficient if the Verdict was before

in general, (12) that the Cause of such Action or Suit did ac-

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the Bankruptcy, and the Case was so decided; but in ex-parte Hill, 11 Ves. 646, Lord Eldon expressed a strong Disapprobation of this Decision. In ex-parte Charles, 14 E. 197, 16 Ves. 256, it was expressly ruled, that a Verdict for Damages in an Action for Breach of Promise of Marriage, upon which no Judgment was entered at the Time of the Act of Bankruptcy was not a sufficient Debt to support a Commission. There does not seem in this Respect to be any Ground of Distinction between a Debt to support a Commission and a Debt proveable, and accordingly in Bass v. Gilbert, 2 M. and S. 70, it was ruled, that the Bankrupt was not discharged by his Certificate; the Verdict in an Action for Seduction having been obtained before the Bankruptcy and Judgment not signed until after. Notes given by Way of Compromise after the Commencement of an Action for Seduction, were held provable, as being liquidated Damages, and perfectly distinct from a Security given as a Premium Pudicitiæ, ex-parte Mumford, 15 Ves. 290.

The Rule that there can be no Proof for Costs unless final Judgment is signed before Bankruptcy, is now extended to the Case of a Nonsuit or Verdict for the Defendant, Walker v. Barnes, 1 Marsh. 346, contrary to the previous Cases of Hurst v. Mead, 5 T. R. 365. Watts v. Hart, 1 B. and P. 134.

As to Cases in which there has been a Composition, Lord Hardwicke, in ex-parte Bennet, 2 Atk. 527, is reported to have ruled, that where the Bankruptcy took place after the Payment of the first Installment, the Creditor was entitled to prove the whole of his Debt and not the Amount of the Composition only, for that the Court would not dispense with Time in Compositions. Where certain Property was assigned in Trust for the Creditors and the Bankrupt consented in Case they were not satisfied within two Years, to pay the Deficiency within a Month afterwards, Lord Eldon directed the Fund to be sold for the Benefit of the Creditors Parties to the Assignment, and that they should be allowed to prove the Remainder of their Debts, ex-parte Richardson, 14 Vesey, 184. In ex-parte Vere, 1 Rose, 281, there was a Deed of Composition for 10s. in the Pound payable by Installments, with an Agreement by the Creditors to release on Payment of the Composition, with a Proviso that in Case of Default or of Bankruptcy before the Composition paid, the Covenants of the Creditors should be void. The Debtor having become Bankrupt after Payment of the first Installment, the Creditors were allowed to prove the whole Remainder of the Debt, deducting the Installment received, ex-parte Vere, 1 Rose, 281. But where the Composition was for 9s in the Pound, by three Installments, with a Proviso to be void in Case of Default of any of the Installments, and two Installments were regularly paid, and the Bankruptcy took place before the third became due, the Creditors were only allowed to prove for the last Installment; Lord Eldon agreed, that if there had been any Default whatever before the Bankruptcy, however small, the Proviso would restrain the Operation of the Release, but said that at the Time of the Bankruptcy nothing whatever was due.

It is agreed that a mere voluntary Bond or other Engagement cannot be proved, but there is a Series of Cases by which it is established that a Bond for the Arrears of such voluntary Engagement is a Bond for a valuable Consideration, and may be proved, see Stiles v. Attorney-General, 2 Atk. 521, Gillum v. Locke, 9 Ves. 612, ex-parte Berry, 2 Christ. 485. Mr. Christian makes some Observations, apparently very judicious, upon the Propriety of this Distinction. A Bond given by Way of Compensation, to a Woman whom the Bankrupt had married, he being already married, without her Knowledge, to another Person,

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crue before such Time as he, she or they became Bankrupts, although founded on the strongest moral Consideration, is considered void as against Creditors, Gillum v. Locke, ub. supra; but it has already been intimated, that a Bond given for the Purpose of compromising an Action for Damages is a provable Debt, ex-parte Ward, 15 Ves. 290, ex-parte Mumford, id. 289.

The Cases respecting the Proof of Bills of Exchange are very numerous, and form a distinct Class in the several Treatises on the Bankrupt Law. Some of them turn upon Questions which would equally arise between the Parties if no Bankruptcy had taken Place, others on the Right to prove and receive Dividends against several Parties, which is materially connected with the Doctrine of Pledges already considered; upon the Right of Set-off, in Case of mutual Securities, or in the Relation of Principal and Surety, upon Accommodation Transactions, which will be respectively adverted to elsewhere; see Notes to Sec. 28 post, 49 Geo. 3, c. 121, Sec. 8. The following are the only Points upon the Subject to which it is at present thought material to advert. It is now settled contrary to the Opinion of Lord Thurlow, 3 Bro. 1, that the Bankruptcy of the Acceptor of a Bill does not dispense with the Necessity of Presentment and Notice to the Drawer or other Parties, ex-parte Curtis, 1794, 1 Co. B. L. 174, (subject to the same Exception in Case of Acceptance without Effects, or of subsequent Promises which prevail in ordinary Cases). The Holder may prove for the full Value against all the Parties, except his own immediate Debtor, although the Bill was given without Consideration, but so as not to receive more than 20s. in the Pound upon the real Debt, ex-parte Bloxam, 6 Ves 449, 600.

The Indorsee may prove for the Value, although the Notes were bought in at an under Rate, (this indeed does not vary from the Case of buying in any other Debts), ex-parte Lee, 1 P. Wms. 782. The Bill may be proved by the Indorser who takes it up after the Bankruptcy of the Acceptor, ex-parte Wallace, ex-parte Crossley Co. B. L. 167. So by any Person to whom it is indorsed after the Bankruptcy, ex-parte Thomas, 1 Atk. 73.

Costs of Protest, &c. may be proved if incurred before Bankruptcy, not if incurred after, 1 Atk. 140. A Drawer abroad may prove the Amount which by the Laws of his own Country he has been compelled to pay on Default of the Acceptor, Francis v. Rucker, Amb. 672. Re-exchange is not provable except so far as it is the Value in Sterling Money of the Money paid Abroad, ex-parte Hoffman, 1799, Co. B. L.

Interest is not provable, in Respect of Bills or Notes, being only considered as Damages, ex-parte Bennett, 2 Atk 527, which has always been followed. The Reason is very unsatisfactory, as the Nature of the Engagement implies a Contract for the Payment of Interest in Case of Default.

Debts which are in themselves illegal cannot be proved, but as Questions of Invalidity would equally arise in any other Proceeding, the Discussion of it has not any particular Relation to the Bankrupt Law. As to illegal Contracts in general, see Appendix, No. 1.

It is settled by recent Cases that Debts, barred by the Statute of Limitations, cannot be proved, and that the Dividends paid on the Proof of such Debts, must be refunded, ex-parte Deudney, 15 Ves. 498, ex-parte Roffey, 2 Rose, 59, 245. The taking a Debtor in Execution after the Commission, is a conclusive Election, and the Creditor cannot afterwards be admitted to prove, ex-parte Knowell, 13 Ves. 192, although done by an Agent without the Knowledge of his Principal, ex-parte Warder, Co. B L. 132. Qy. if it is before any Knowledge of the Commission, 1 Christ. 221. A Creditor having his Debtor in Execution may defer his Election until the Dividend, 14

and may give this Act and the Special Matter in Evidence; (13)

Ves. 138—Query, if the Bankrupt has previously obtained his Certificate, 1 Chris. 221. If the Bankrupt is voluntarily discharged from the Execution, the Debt cannot afterwards be proved, ex-parte Bisson, Cooke 133.

When the Debt by Virtue of a Contract carries Interest, such Interest (except in the Case above alluded to of Bills of Exchange) is allowed to be proved. I do not think it necessary to enter into the Detail of Cases upon the Construction of Contracts in this particular, but it is a settled Rule that all Interest with Respect to Proof ceases from the Date of the Commission, except there is a Surplus, in which Case it is allowed against the Bankrupt, as to which see ante 13 Eliz. c. 7, S. 4, n.

One of the most embarrassing Subjects of the Bankruptcy Law, as well with Respect to the Proof of Debts as many other Particulars, is the Arrangement to be made in the Case of joint and several Debts and Estates. Having entered minutely into the Discussion of that Subject in the Letter forming the Appendix to the present Class, Sec. 31, I shall reserve any farther Mention of it for the Notes intended to be there introduced.

With Respect to the Time when the Debt is incurred, the general Rule is, that it must be previous to the Act of Bankruptcy, Bamford v. Burrell, 2 B. c. P. 1, the Necessity that Judgment shall actually be signed previous to the Act of Bankruptcy, so as to entitle a Creditor to prove for Costs, a Plaintiff to prove in an Action for Damages, a Defendant for the Costs of a Verdict or Nonsuit, has already been adverted to; on the other hand it has been shewn that it it is not necessary that the Holder of a Bill should have been entitled to it at the Time of the Act of Bankruptcy, provided the Obligation of the Bankrupt as Drawer, Indorser or Acceptor had previously attached.

But the general Practice has been to require only a Deposition of the Existence of the Debt at the Time of the Date of the Commission, unless the Attenton of the Commissioners has been particularly called to the Question of its arising after the Act of Bankruptcy, and now by 46 Geo. 3, c. 135 (post) Sec. 2, the Proof may be for Debts bona fide contracted before the Date of the Commission, provided the Creditor at the Time of contracting the Debt had no Notice of a prior Act of Bankruptcy, but this Provision does not seem to have been regarded as applying to the above-mentioned Cases of judicial Proceedings, most of the Authorities respecting which are of a subsequent Date, and in ex-parte Kemshead 1 Rose, 149, a Submission to Arbitration as to the Amount of the Debt and the Award thereon being subsequent to the Act of Bankruptcy and previous to the Commission was by the Commissioners considered as conclusive. The Lord Chancellor upon an Allegation that only a smaller Sum was due, made an Order, granting the Prayer of a Petition for Enquiry, and that the Debt might be expunged.

It is clearly immaterial whether the Debt subsisted during the Time that the Bankrupt was a Trader, so far as regards the Right of Proof, although that Circumstance is essential with Respect to the Debt of the petitioning Creditor.

As to the Circumstance and manner of Proof, the Deposition or Affidavit of the Creditor is the usual and proper Course. The Commissioners are authorized to enquire into the Circumstances, and where the Creditor refused to answer their Enquiries, on the Ground that it might tend to criminate him, the Lord Chancellor refused to allow him to prove, ex-parte Symes, 11 Ves. 521. Where a Creditor resided Abroad, and it was impossible for him to settle the Accounts before a Meeting advertised, the Lord Chancellor directed that the Commis-

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and the Certificate of such Bankrupt's conforming, and the

sioners should be allowed to receive such Proofs as he should be enabled to make without requiring his Oath, ex-parte Young, Co. B. L. 137. In the preceding Part of the Note Cases have been adduced of Proofs by a Parishioner or Co-Collector against a Collector of Taxes.

Public Companies prove by their proper Officers, and in ex-parte the Bank of England, 1 Rose, 142, the Bank was allowed to prove by their Clerk usually employed for that Purpose, without his having Power of Attorney, and the Lord Chancellor said he should make a general Order. In Co. B. L. 127, it is said that Corporations usually appoint a Clerk or Treasurer, who is the Person to prove their Debts, but that he must produce his Appointment under Seal to the Commissioners.

The Assignor and Assignee should join in the Proof of a Bond or other Debt assigned, Co. B. L. So Trustee and Cestui-que-Trust, id. One of the Admirals may prove on Behalf of all the Captains upon the Estate of a Navy Agent, ex-parte Russel, 1 Mont. B. L. 71. A Guardian on Behalf of an Infant, ex-parte Belton, 1 Atk. 251; Walcott v. Hall, 2 Bro. 305. A Person who had undertaken the Management of the Affairs of a Creditor, non compos mentis, ex-parte Maltby, 1 Rose, 387, (but Query whether in this Case it would be proper for the Commissioners to admit the Proof of their own Authority.) A Bankrupt Executor may prove on his own Estate, but in such a Case the Lord Chancellor ordered the Dividends to be paid into the Bank, ex-parte Leeke, 2 Bro. 596. Upon an Application by Petition in the first Instance for one of several Legatees to prove against an Executor who had misapplied the Funds, the Lord Chancellor referring to a former Case (ex-parte Shakeshaft, 3 Bro. 197), said that Lord Thurlow held, that an Executor having dealt fraudulently with the Fund ought not himself to be permitted to prove, and when the important Consequences attached to a Proof and its Influence in the Bankruptcy are considered, it would be most mischievous to permit him. The Practice was causing a Claim to be entered to refer it to the Master to appoint a proper Person to prove. If the Court can do this by Reference to the Master, it can in the first Instance, and to save Circuity, make the Nomination, and he was sure that again and again, a Legatee had been permitted to prove for himself and others with a Direction that the Dividends should be paid into the Bank. The Order for that Purpose made by the Vice Chancellor must not be disturbed, ex-parte Moody, 2 Rose, 413.

(12.) This general Plea cannot be supported in Respect of a Bankruptcy in Ireland, Quin v. Keefe, 2 H. B. 553.

(13.) The Plea need not state that the Bankrupt had conformed, which is Matter of Evidence, Willan v. Geordini, Co. B. L. 540 (overruling Paris v. Salkeld, 2 Wils. 139), nor that the Bankruptcy happened before the Commencement of the Suit; Tower v. Cameron, 6 E. 413; and the Allowance of the Certificate after the Plea is sufficient, Harris v. James, 9 E. 82. But the Plea must state that the Cause of Action accrued before the Bankruptcy, Charlton v. King, T. R. 158. The Plea lets in the whole Merits, Alsop v. Price, Doug. 160, (in that Case the Action was on a Bond and it was ruled that the Plaintiff might shew by the Condition that there was no Cause of Action before the Bankruptcy.) The Plea cannot be pleaded by Bail, but they may have Relief upon Motion, or by Audita Querela, Walker v. Giblett, 2 Bl. 812, Beddom v. Holbrooke, 1 B. & P. 450, Donnelly v. Dunn, id. 446, 2 B. and P. 45. A Judgment was set aside to let in a Plea of Bankruptcy, Evans v. Gill, 1 B. and P. 52. As to Evidence of the Time when the Act of Bankruptcy was committed, see Pearson v. Fletcher, 5 Esp. 90. In Bateson v. Hartsick, 4 Esp. 43, Lord

Allowance thereof according to the Directions of this Act, shall be, and shall be allowed to be sufficient Evidence of the Trading, Bankruptcy, Commission, (14) and other Proceedings precedent to the obtaining such Certificate, and a Verdict shall thereupon pass for the Defendant, (15) unless the Plaintiff in such Action can prove the said Certificate was obtained unfairly, and by Fraud; (16) or unless the Plaintiff in such Action can make appear any Concealment by such Bankrupt to the Value of ten Pounds; and if a Verdict pass for the Defendant, or the Plaintiff shall become non-suited, or Judgment be given against the Plaintiff, the Defendant shall recover his full Costs. (17)

NO. 1[illegible]. 5 Geo. II. Cap. 30. A. D. 17[illegible].

Bankrupt's Allowance if the Effects amount not to 10s. per Pound.

VIII. Provided always, and it is hereby declared and enacted by the Authority aforesaid, that if the neat Proceed of such Bankrupt's Estate so to be discovered, recovered and received, together with what shall be otherwise recovered and received, shall not amount to so much as will pay all and every the Creditors of such Bankrupt, who shall have proved their Debts under the said Commission, the Sum of ten Shillings in the Pound for their respective Debts, after all Charges first had

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Kenyon held that the Solicitor ought not to produce the Proceedings, being the Papers of his Clients the Assignees, and said if the Plaintiff wanted them on the Trial of a Cause, he should have them enrolled—but Query whether it would not be more desirable that the Proceedings in Bankruptcy should be considered as Public Acts of Courts of Justice, and where is there any real Use in subjecting a Party having a collateral Interest to the Expence of enrolling the Proceedings, so as to produce a Copy rather than the Original? At all Events I conceive, that this Nisi Prius Case should not, without further Consideration, be received as conclusive Authority. For Cases of Discharge under Stat. 49, Geo. 3, c. 121, in which it is necessary to plead specially, see that Statute, post For Cases of Relief upon summary Application, see post, Sec. 13.

(14.) The Bankrupt is entitled to the Benefit of his Certificate, although the Commission was against him by a wrong Name, Stevens v. Elizee, Camph. N. P. 256.

(15.) A Defendant who had omitted to plead his Bankruptcy not relieved upon Injunction, Lingard v. Hibbertson, 1 Rose, 459

(16.) The Certificate is void if any Consideration was given for signing it, although without the Privity of the Bankrupt, Robson v. Calze, Doug. 216, Holland v. Palmer, 1 B. c. P 95, ex-parte Butt, 10 Ves. 359; so, where the Signature improperly obtained was the fourth, the three preceding ones not being sufficient in Value, although the preceding and subsequent Signatures together were, Philips v. Dicas, 15 East, 248. Where the Money was given without the Knowledge of the Bankrupt, the Lord Chancellor, upon his Application, allowed the Certificate to be cancelled, in Order that he might obtain a new one, sufficiently signed by other Creditors than the one receiving the Money, ex-parte Harrison, 4 Mont. B. L. Appx. 56.

The Certificate is void if Money is given to withdraw a Petition against it, ex-parte Gibson, Cooke B. L. 465.

(17) An Executor is not by this Provision subject to Costs in Cases where he would be otherwise exempt, Martin v. Norfolk, 1 H. B. 528.

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and deducted, that then and in such Case, such Bankrupt shall not be allowed the Sum of five Pounds per Centum out of such Estate as shall be so recovered in; but shall be allowed and paid by the Assignees so much Money, as the said Assignees and Commissioners authorised as aforesaid shall think fit to allow to such Bankrupt, not exceeding three Pounds per Centum.

IX. Provided always, and be it further enacted by the Authority aforesaid, that from and after the twenty-fourth Day of June, one thousand seven hundred and thirty-two, in Case any Commission of Bankruptcy shall issue against any Person or Persons, who after the said twenty-fourth Day of June, one thousand seven hundred and thirty-two shall have been discharged by Virtue of this Act, (18) or shall have compounded with his, her, or their Creditors, (19) or delivered to them, his, her, or their Estate or Effects, and been released by them, or been discharged by any Act for the Relief of Insolvent Debtors after the Time aforesaid, that then and in either of those Cases the Body and Bodies only of such Person and Persons conforming as aforesaid shall be free from Arrest and Imprisonment by Virtue of this Act; (20) but the future Estate and Effects of every such Person and Persons shall remain liable to his, her or their Creditors, (21) as before the making of this Act (the Tools of Trade, the necessary Household Goods and Furniture, and necessary Wearing Apparel of such Bankrupt and his Wife and Children only excepted) unless the Estate of such Person or Persons against whom such Commission shall be awarded, shall produce clear, after all Charges sufficient to

In what Cases future Effects of Bankrupts still liable to Creditors.

(18.) It is sufficient for the Plaintiff to produce the former Commission and Proceedings without proving the Trading, &c. Haviland v. Cooke, 5 T. R. 653.

(19.) The Liability under this Clause attaches, although the first Commission is, after the Certificate, superseded on the Petition of the Creditors, it being treated as a Composition, Thornton v. Dallas, Doug. 46. If a Deed of Composition is intended to embrace all the Creditors, it is within the Act, although all do not execute, Slaughter v. Cheyne, 1 M and S. 182. Secus where the Deed is only for a Composition with joint Creditors not embracing separate Debts: per Lord Ellenborough, "We think the true Construction of this Clause is that the Compositions it contemplates are not such as are limited to a particular Description of Creditors only, but such as are general, and would admit all Creditors of whatever Description," Norton v. Shakespeare, 15 East, 619. In Read v. Sowerby, 3 M. and S. 78, it was ruled that a Case is within the Act, although after the Composition the Bankrupt has paid all his Creditors, but the Case was decided upon a different Point.

(20.) The Bankrupt is not entitled to his Allowance, ex-parte Crew, 16 Ves. 236.

(21.) It was ruled in Philpot v. Corden, 5 T. R. 287, that a Creditor was not debarred the Benefit of this Charge by having signed the Certificate under the second Commission; but now by Stat. 49 Geo. 3, c. 121, the Proof under the second Commission is an Election and debars the Right of Action; Read v. Sowerby, 3 M. and S. 78.

pay every Creditor under the said Commission, fifteen Shillings in the Pound (22) for their respective Debts. (23)

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On what Conditions Certificates to be signed.

X. Provided also, and be it enacted by the Authority aforesaid, that no Discovery upon Oath or solemn Affirmation to be made by any Bankrupt or Bankrupts of his, her or their Estate and Effects, pursuant to this Act, shall intitle such Bankrupt or Bankrupts to the Benefits allowed by this Act, unless the Commissioners authorized by such Commission, or the major Part of them, shall in Writing under their Hands and Seals (24) certify to the Lord Chancellor or Lord Keeper, or Commissioners for the Custody of the Great Seal of Great Britain, for the Time being, that such Bankrupt or Bankrupts hath or have made a full Discovery of his or her Estate and Effects, (25) and in all Things conformed himself, herself or or themselves according to the Directions of this Act, and that there doth not appear to them any Reason to doubt of the Truth of such Discovery, or that the same is not a full Discovery of all such Bankrupt's Estate and Effects, and unless four (26) Parts in five in Number and Value of the Creditors of such Bankrupt or Bankrupts, who shall be Creditors for not less than twenty Pounds respectively, and who shall have duly proved their Debts under such Commission, or some other Person by them respectively duly authorized thereunto, shall sign such Certificate, and testify their Consent to such Allowance and Certificate (27) and to the said Bankrupt's Discharge in pursuance of this Act, to be also certified by such Commis-

(22) In Jelfs v Ballard, 1 B and P. 467, Evidence of the Assignees was received that the Effects were not likely to produce 5s. in the Pound, but in Coverly v. Morley, 16 E. 225, it was ruled that it must be proved that the Estate has paid so much

(23) The Effect of the Clause is only that the Property is liable to the Creditors notwithstanding the Certificate, but it vests in the Assignees under a third Commission as in other Cases. Hovil v. Browning. 7 E 154, and upon the same Principle, the Lord Chancellor refused to supersede a third Commission, upon the Ground that the Property belonged to the Assignees under the second, on Account of the Non-payment of 15s. in the Pound, ex-parte Baker, 1 Rose. 452.

(24.) By general Order, 8th Aug. 1809, the Certificate is to be attested by the Solicitor or his Clerk, the Messenger to the Commission, or a Clerk of the Commissioners respectively.

(25.) There is no Power of compelling the Commissioners to certify. Ruled on Petition ex-parte King, 11 Ves. 417, 13 Ves. 181, 15 Ves. 128, and on Application for a Mandamus, 7 E 92 Where a Certificate is sent back to let in other Creditors, it must be re-signed by the Commissioners who have the same Discretion as at first, 15 Ves. 126.

(26.) Altered to three by 49 Geo. 3, c. 121, sec 18.

(27.) A Creditor who proves both in his own Right and as Executor can only sign once, ex-parte Saumarez, 1 Atk. 84, ex-parte Stracey, 1 Rose, 60: but a Person proving on his own Account and for his Partner may sign in both Rights. So a Creditor becoming the Representative of another who has proved. stated as the Practice, 1 Christ. 150. I have always understood the Practice to be as stated, and have in Fact known a Certificate in which four Signatures out of

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sioners; but the said Commissioners shall not certify the same, till they shall have Proof by Affidavit or Affirmation in Writing of such Creditors, or of the Person by them respectively authorised for that Purpose, signing the said Certificate, and of the Power and Authority by which any Person shall be authorized by any Creditor to sign such Certificate for any Creditor; which Affidavit or Affirmation, together with such Warrant or Authority to sign, shall be laid before the Lord High Chancellor, Lord Keeper or Commissioners of the Great Seal, with the said Certificate, in Order for the allowing and confirming the same; and unless such Bankrupt make Oath, or, being of the People called Quakers, solemnly affirm in Writing, that such Certificate and Consent of the Creditors thereunto were obtained fairly and without Fraud, (28) and unless such Certificate shall, after such Oath or Affirmation of the Bankrupt, be allowed (29) and confirmed by the Lord Chancellor, Lord Keeper or Commissioners for the Custody of the Great Seal of Great Britain for the Time being, or by such two of the Justices of the Courts of King's Bench, Common Pleas, or Barons of the Court of Exchequer at Westminster, to whom the Consideration of such Cetificate shall be referred by the Lord Chancellor, Lord Keeper or Commissioners of the Great Seal

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five were by the Bankrupt's Father in Respect of different Partnerships. One Partner may sign for all, although the Partnership is dissolved, and although the other Partners petitioned against the Allowance, ex-parte Hall, 1 Rose, 2. One of two Trustees cannot sign for the other without special Authority, although no dissent appeared, ex-parte Rigby, 2 Rose, 224. One Executor may sign for all, admitted, Powell v. Evans, 5 Ves. 839. Where an Executor is Trustee for other Persons, Quere by Arden, M. R. if he does not make himself liable? S. C. but I am inclined to think that this Intimation has not been generally approved of. Mr. Christian says, a Bankrupt and his Assignees and a Husband and Wife, in Respect of the Debt of the Wife, ought to join, Vol. 1, 151, Vol. 2, 199.— Query, whether there is an uniform Practice at Guildhall upon that Subject. In Cooper's Case, Green, B. L. 260, Lord Hardwicke is reported to have held that a Bankrupt Executor may choose himself Assignee and sign his own Certificate, and it certainly has not been unusual to admit his Signature upon that Authority, but in ex-parte Jackson, 2 Rose, 221, it was ruled that a Bankrupt although certificated, could not be Assignee under his own Commission, and no Trace could be found of the Case alluded to in the Bankrupt Office The Objection in Point of Propriety to admitting the Bankrupt to have a Voice as to his own Certificate, is so palpable, that if such is the Law, the general Interest of the Creditors requires it should be altered, see ex-parte Watson, 2 Rose, 259—ante Note, as to directing the Proof to be made by a Cestui-que-trust.

(28.) Where one of two Bankrupts, having a joint Certificate, died without making the proper Affidavit, the Certificate was allowed as to the other, ex-parte Currie, 10, Ves. 51.

(29.) It is from the Allowance that the Certificate becomes complete, all Property coming to the Bankrupt up to that Time passes to the Assignees, Tudway v. Bourne, 2 Bur. 716, Webb v. Ward, 7 T. R. 296.

for the Time being; and any of the Creditors of such Bankrupt are allowed to be heard, (30) if they shall think fit, before the respective Persons aforesaid, against the making such Certificate, and against the Confirmation thereof; nor shall any Commissioner sign such Certificate, till after four Parts in five in Number and Value of the said Creditors shall have signed the same as aforesaid. (31)

(30.) A Petition against the Allowance may be presented by a Creditor under £20, ex-parte Allen, 7 Ves. 134: a Creditor who has signed, as he may have obtained Information that it was improperly obtained, Tudway v. Bourne, 2 Bur. 716: a Creditor electing to proceed at Law, ex-parte Parquet, 14 Vesey, 493, but Quere as to this since Statute 49 Geo. 3. See ex-parte Joseph, 1 Rose, 148, ex parte Hardenbergh, id. 204.

(31.) It has been frequently stated by Lord Eldon, that any Misconduct of the Bankrupt, previous to the Bankruptcy, is not a Ground for staying the Certificate. "The Law says that the Certificate shall be affected by Misconduct, not before the Bankruptcy, but in the Bankruptcy," ex-parte Anderson, 1 Rose, 93.—"I have over and over again said, and am anxious to repeat it, that neither the Great Seal nor the Commissioners can withhold the Certificate for Misconduct, unless upon Misconduct under the Bankruptcy, and for Non-conformity to the Bankrupt Laws," ex-parte Gardner, 1 Rose, 377.

In ex-parte Shirley, 2 Rose, 71, his Lordship expressed his Determination never to allow a Certificate when the Bankrupt had knowingly suffered fictitious Debts to be proved against his Estate; and see ex-parte Laffert, 1 R. 330. Certificates may be stayed to give Creditors abroad, or whose Proofs have been prevented by Accident, an Opportunity of proving, ex-parte Saumarez, 1 Atk. 84, ex-parte Baisaro, 1 Rose, 266, ex-parte Lord, 2 Rose, 421. In the last Case the Creditor had the Bankrupt in Custody for Debt, and the Lord Chancellor said he could not stay the Certificate without having an Undertaking that the Creditor would prove, in which Case the Bankrupt would be discharged. The Creditor afterwards preferred a Charge against the Bankrupt for a Misdemeanor and kept him in Custody thereon, and the L. C. being of Opinion that this was an Evasion of the Order, allowed the Certificate. In ex-parte Adams, 2 Bro. 48, a Creditor was not allowed to prove and stay the Certificate without giving a satisfactory Account why he did not come before, and the same was held accordingly, ex-parte Dyson, 1 Rose, 67 n.—not stayed to give a Person insisting on a Right to stop in Transitu an Opportunity to prove in Case he should fail in his Action, ex-parte Heath, 6 Ves. 613; or on Account of an Objection of Creditors in Scotland, that the Bankrupt was properly the Object of a Sequestration, and that the Question of Sequestration was then depending in the Court of Sessions, ex-parte Cockayne, 2 R. 233; not upon a mere legal Objection as losing at Cards, unless clearly proved, ex-parte Kennet, 1 Rose, 331; nor upon a Charge of Concealment stated only upon Information and Belief, and not positively proved, ex-parte Joseph, 1 Rose, 184; nor on Account of the Bankrupt being uncertificated under a former Commission, ex-parte Thompson, 1 Rose, 285. The Bankrupt's Accounts being in a slovenly State, no Objection, unless he has refused his Assistance to arrange them, ex-parte Hawson, 1 R. 67 n. A Petition against the Allowance not suffered to be withdrawn without Leave and *semble*, the Court will require an Affidavit that it is not withdrawn from improper Motives, ex-parte Gibson, 6 Ves. 5. The Affidavits against the Certificate must be presented with the Petition, General Order, 12 April, 1796—Affidavits in

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Contracts to induce Creditors to sign Certificates, void

XI. And be it enacted by the Authority aforesaid, that every Bond, Bill, Note, Contract, Agreement or other Security whatsoever, to be made or given by any Bankrupt, or by any other Person, unto or to the Use of or in Trust for any Creditor or Creditors, or for the Security of the Payment of any Debt or Sum of Money due from such Bankrupt at the Time of his becoming Bankrupt, or any Part thereof, between the Time of his becoming Bankrupt and such Bankrupt's Discharge, as a Consideration, or to the Intent to persuade him, her or them to consent to or sign any such Allowance or Certificate, (32) shall be fully void and of no Effect; and the Monies thereby secured or agreed to be paid shall not be recovered or recoverable, and the Party sued on such Bond, Bill, Note, Contract or Agreement shall and may plead the General Issue, and give this Act and the special Matter in Evidence, any Thing herein contained, or any Law, Custom or Usage to the Contrary notwithstanding (33)

Persons excepted from the Benefits of this Act

XII. Provided always, and be it enacted by the Authority aforesaid, that nothing in this Act shall be construed to extend, or give or grant any Privilege, Benefit or Advantage to any Bankrupt whatsoever against whom a Commission of Bankrupt under the Great Seal of Great Britain, since the said fourteenth Day, of May which was in the Year of our Lord

Reply excepted, G. O 16 Nov 1805. It is a general Rule that the Petition against the Certificate if unsuccessful must be dismissed with Costs, but this may be dispensed with on Account of the Bankrupt's Misconduct, ex-parte Gardner, 1 R. 317, ex-parte Bank of Scotland, 1 R. 575 A Certificate fraudulently or unduly obtained may be recalled, Davies, B. L 437, ex-parte Tallis, 1 Ball and B 321, 1 R. 371, ex-parte Cawthorn 2 R. 186. In ex-parte Tallis, Lord Manners directed an Inquiry whether the Certificate could be revoked without Injury to the Persons who might have been engaged with the Bankrupt in subsequent Transactions.

It is agreed that a Certificate is defeated by the Supersedeas of the Commission, and therefore the Fact of the Certificate having been obtained is regarded as an Objection to a Supersedeas on Account of legal Objections to the Commission, where there is no Imputation on the Bankrupt, see ex-parte Moule, 14 Ves. 602, ex-parte Crowder, 2 Rose, 324, and where a separate Commission issued against A, under which he had obtained his Certificate, and afterwards a joint Commission against A and B, the Lord Chancellor instead of superseding the separate Commission according to the usual Course, impounded it, in Order to protect the Certificate, ex parte Tobin, 1 R 431.

(32) Lord Parker held, that a Bond in Consideration of withdrawing a Petition against the Certificate was not within the Act; but the Contrary, was ruled Sumner v Brady, 1 H B. 647. A Promise for the Benefit of all the Creditors is within the Act, Jones v. Barkley Doug 684. Money paid for signing a Certificate may be recovered back, Smith v Bromley, n ibid A Promise by the Bankrupt to give Evidence for the Assignees and release his Surplus in Consideration of signing his Certificate is not objectionable, Selby v. Crew, 2 Anstr. 504.

(33.) A Promise by the Bankrupt in Consideration of the Creditor not proving his Debt is binding, Trueman v. Fenton, Cowp. 544.

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one thousand seven hundred and twenty-nine, hath issued, or hereafter shall issue, who hath or shall, for or upon Marriage of any of his or her Children, (34) have given, advanced or paid above the Value of one hundred Pounds, unless he or she shall prove, or by his or her Books fairly kept or otherwise upon his or her Oath or, being of the People called Quakers, upon solemn Affirmation before the major Part of the Commissioners in such Commission named and authorized, that he or she had at the Time thereof, over and above the Value so given, advanced or paid, remaining in Goods Wares Debts, ready Money, or other Estate Real or Personal, sufficient to pay and satisfy unto each and every Person, to whom he or she was any ways indebted, their full and entire Debts, or who hath or shall have lost in any one Day the Sum or Value of five Pounds or in the whole the Sum or Value of one hundred Pounds within the Space of twelve Months next preceding his, her or their becoming Bankrupt, in playing at or with Cards, Dice, Tables, Tennis, Bowls, Billiards, Shovel Board, or in or by Cock fighting, Horse-races Dog matches or Foot races, or other Pastimes, Game or Games (35) whatsoever or in or by bearing a Share or Part in the Stakes, Wagers or Adventures, or in or by betting on the Sides or Hands of such as do or shall play, act, ride or run as aforesaid, or that within one Year before he or she become Bankrupt, shall have lost the Sum of one hundred Pounds, by one or more Contracts for the Purchase, Sale, Refusal or Delivery of any Stock of any Company or Corporation whatsoever, or any Parts or Shares of any Government or public Funds or Securities, where every such Contract was not to be performed within one Week from the Time of making such Contract, or where the Stock or other Things so bought or sold, was not actually transferred or delivered in Pursuance of such Contract.

Bankrupts im[illegible] after Certificate [illegible] to all [illegible] to be discharged.

XIII. And be it further enacted by the Authority aforesaid, that if any Bankrupt who shall have obtained his or her Certificate from the acting Commissioners, and such Certificate shall have been allowed and confirmed as by this Act is directed, shall be taken in Execution or detained in Prison, on Account of any Debts due or owing before he or she became Bankrupt, by Reason that Judgment was obtained before such Certificate was allowed and confirmed, it shall and may be lawful for any one or more of the Judges of the Court, wherein Judgment has been so obtained against such Bankrupt, on such Bankrupt's pro-

(34) The Clause does not extend to Money given to a Niece, ex parte Saumarez, 1 Atk. 84.

(35.) Insuring in the Lottery ruled not to be Gaming within the Act, Lucy v. Piercy, 1 H. B. 29, nor keeping a Lottery Office, ex-parte Richardson, Cooke B. L. 462. A Creditor after Certificate allowed not permitted to inspect the Bankrupt's Books, in Order to discover gaming Transactions, ex-parte Manson, 6 Ves. 614.

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during his, or her Certificate allowed and confirmed, to order any Sheriff or Sheriffs, Bailiff or Officer, Gaoler or Keeper of any Prison, who hath or shall have any such Bankrupt in his Custody, by Virtue of any such Execution, to discharge such Bankrupt out of Custody on such Execution without Payment of any Fee or Reward; and such Sheriff or Sheriffs, Bailiff or Officer, Gaoler or Keeper is and are hereby required to discharge such Bankrupt out of Custody accordingly, and is and are hereby indemnified from any Action for an Escape for his or their so doing (36)

Judges or Justices may grant Warrants to apprehend Bankrupts not conforming.

XIV. And be it further enacted by the Authority aforesaid, that upon Certificate made under the Hands and Seals of the Commissioners by such Commission authorized, or to be authorized, or the major Part of them, that such Commission is issued, and such Person or Persons proved before them to become Bankrupt or Bankrupts, it shall and may be lawful to and for all or any of the Justices of his Majesty's Courts of King's Bench, or Common Pleas, or Barons of the Court of Exchequer, and to and for all and every the Justices of the Peace within that Part of the Kingdom of Great Britain called England, the Dominion of Wales, and Town of Berwick upon Tweed, and they are hereby impowered and required, upon Application to them for that Purpose made, to grant his or their Warrant or Warrants under his or their Hands and Seals for the taking and apprehending such Person or Persons, and him, her or them to commit to the common Gaol of the County where he, she or they shall be so apprehended and taken, there to remain until he, she or they be removed by Order of the said Commissioners, or the major Part of them, by Warrant under their Hands and Seals; and the Gaoler or Keeper to whose Custody such Person or Persons shall be committed, is hereby required to take and

(36.) A Bankrupt obtaining his Certificate after Judgment, discharged under this Clause both as to Debt and Costs, Harris v. James, 9 E. 82. The Bankrupt is discharged as to the Costs of a Scire Facias after the Bankruptcy upon a Judgment before, and also for Costs of non-prossing a Writ of Error brought by him, Philips v. Brown, 6 T. R. 282 After a Certificate the Courts will allow the Bail to enter an Exoneretur without actual Surrender, Martin v. Olbara, Cowp. 823. In Calcraft v. Swann, Barnes, 204, the Court of C. B. refused to relieve in a summary Way as to Goods taken in Execution after a Certificate, saying that, if the Certificate was too late for the Defendant to plead it he might bring Audita Querela, and in Ashdown v. Fisher, Barnes, 206, they held that Goods might be taken, but in Lister v. Mundell, 1 B. and P. 427, the Goods were restored, the Court holding it to be the modern Practice to interpose on Motion, in all Cases where Relief might be had by Aud. Quer. The Court will not discharge the Defendant if the Certificate was obtained by Fraud, or the Validity of it is intended to be seriously disputed, see Vincent v. Brady, 2 H. B. 1, Stracey v. Decy, 2 B. and P. 390. The Bankrupt cannot be discharged from a Capias Utlagatum under mesne Process, Semble, Beauchamp v. Tomkins, 3 Taunt. 141.

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receive such Person or Persons into his Custody, and forthwith to give Notice to one or more of the said Commissioners in the said Commission named, of such Person or Persons being in his or their Custody, to the Intent the said Commissioners may send their Warrant to such Gaoler or Keeper (which they are hereby impowered and required forthwith to send) for the delivering such Bankrupt or Bankrupts to the Person or Persons named in such Warrant, who shall be thereby authorized to convey and bring such Person or Persons to the said Commissioners, in Order to such Examination and Discovery as aforesaid; and the said Commissioners are hereby likewise authorized and impowered by such their Warrant, or any other Warrant, to take and seize any of the Goods, Wares, Merchandize and Effects of such Bankrupt or Bankrupts (the necessary Wearing Apparel of such Bankrupt, or of his Wife or Children only excepted) and any of his, her or their Books, Papers or Writings, which shall be then in the Custody or Possession of such Bankrupt or Bankrupt, or of any other Person or Persons, in any Prison or Prisons whatsoever; any Custom or Usage to the Contrary in any wise notwithstanding.

Gaolers to give Notice to Commissioners.

Goods or Books to be seized in Prisons.

XV. Provided always, and be it enacted by the Authority aforesaid, that if any such Person or Persons so apprehended and taken shall within the Time or Times allowed by this Act for that Purpose, submit to be examined, and in all Things conform, as if he, she or they had surrendered, as by this Act such Bankrupt or Bankrupts is or are required; that then such Person so submitting and conforming shall have and receive the Benefit of this Act, to all Intents and Purposes, as if he, she or had voluntarily come in and surrendered himself, herself or themselves; any Thing herein contained to the Contrary thereof in any wise notwithstanding.

Bankrupts so apprehended, on Conformity, to have the Benefit of the Act.

XVI. And be it further enacted by the Authority aforesaid, that it shall and may be lawful to and for the said Commissioners, or the major Part of them, to examine as well by Word of Mouth, as on Interrogatories in Writing, all and every Person and Persons against whom any Commission of Bankrupt is or shall be awarded, touching all Matters relating to the Trade, Dealings, Estate and Effects of all and every such Bankrupt and Bankrupts, (37) and also to examine in the Manner aforesaid, all and every other Person duly summoned before, or present at any Meeting of the said Commissioners, or the major Part of them, touching all Matters relating to the Person, Trade, Dealings, Estate and Effects of all and every such Bankrupt and Bankrupts, and

Power to examine the Bankrupt and others.

(37.) As to the Examination of Persons supposed to be indebted to the Bankrupt, or to detain Goods belonging to him, see 5 Eliz. c. 7, Sec. 5, 6, 1 Jac. c. 15, Sec. 10, 11, and Notes ibid.

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any Act or Acts of Bankruptcy (38) committed by him, (39) her or them, and also to take down or reduce into Writing, the Answers of verbal Examinations of every such Bankrupt or other Person had or taken before them as aforesaid; which Examination so taken down or reduced into Writing, the Party examined shall and is hereby required to sign and subscribe; and in Case any such Bankrupt or Bankrupts, or other Person or Persons, shall refuse to answer, or shall not fully answer to the Satisfaction of the Commissioners, (40) or the major Part of them,

Persons not answering Interrogatories of Commissioners, to be imprisoned.

(38.) The Statutes 5 Eliz. and 1 Jac. contain Provisions for enforcing the Attendance of Persons Liable to be examined under those Statutes, in Case of their omitting to attend upon Summons; and the expired Acts, 4 and 5 Ann, c. 17, 5 Geo. 1, Stat. 24. also gave the Commissioners compulsory Powers with Respect to Witnesses summoned to prove the Act of Bankruptcy, the Defect of which in the present Act is very manifest, as it is necessary in Case of Refusal, to apply by Petition to compel such Attendance, whereupon an Order is made accordingly for the Purpose, under the general Powers of the Great Seal, ex-parte Lund, 6 Ves. 781, ex-parte Higgins, 11 Ves. 8, ex-parte Jones, 1 R. 39, ex-parte Gardner, 2 R. 107.

(39.) If the Trading and Act of Bankruptcy are proved by Persons who appear to be Creditors, it is objectionable, and Commissions have been sometimes superseded on that Account, although it is clear that the Facts may, in Case of the Commission being contested at Law, be proved by other Witnesses, or the Witnesses before examined, may be rendered competent by Release or Payment. If it appears, that the Commission can be supported by other Evidence, I apprehend it will not be superseded, but an Issue directed, see ex-parte Osborne, 1 Rose, 387. In that Case the L. C. superseded the Commission without an Issue, no Witness being mentioned capable of proving an Act of Bankruptcy; but the Proof itself was also defective. It is clear that, at Law no Exception can be taken on Account of a Witness having been examined who was incompetent, unless the Objection was taken at the Time; and considering the Extent to which Persons are allowed to swear, for their own Benefit, upon Commissions of Bankrupt, and, that the most frequent Acts of Bankruptcy can often only be proved by Servants who have some Claim for Wages, I think it would be more convenient not to consider the Admission of such Evidence, upon the opening the Commission, a Ground of Supersedeas. A Person summoned as a Witness, to prove the Act of Bankruptcy, &c. cannot object to attend on the Ground that he is a Creditor, as that may be Matter of Enquiry, ex-parte Gooldie, 2 R. 330. Where an Attorney objected to attend, alleging that, he knew no Circumstances but what came to his Knowledge professionally, the L. C. directed him to attend, reserving just Exceptions as to the Questions put by the Commissioners.

(40.) It was formerly held, that if the Bankrupt swore positively to the Fact examined into, he could not be committed; but that Doctrine is now exploded, and he may be committed if his Account is so improbable as to be deemed incredible, ex-parte Nowlan, 6 T. R. 118, 1 Ves. 511. If the Commissioners commit upon an Answer which is deemed satisfactory, they are liable to an Action, Miller v. Seare, 2 Bl. Rep. 1141. It is said by Lord Hardwicke, ex-parte Mymot, 1 Atk. 199, that if the Bankrupt has an Objection to the Question he must demur; the same Observation will apply to a third Person, but the Mode of arguing the Demurrer is rather inconvenient, as there must be a Commitment to Prison, an Habeas Corpus, or an Action, see Observations, Let. Rom. Sec. 16.

all lawful Questions put to him, her or them, by the said Commissioners, or the major Part of them, as well by Word of Mouth, as by Interrogatories in Writing, or shall refuse to sign and subscribe his, her or their Examination so taken down or reduced into Writing as aforesaid, (not having a reasonable Objection either to the wording thereof or otherwise, to be allowed by the said Commissoners) it shall and may be lawful to and for the said Commissioners, or the major Part of them, by Warrant under their Hands and Seals, to commit him, her or them to such Prison as the said Commissioners, or the major Part of them, shall think fit, there to remain without Bail or Mainprize, until such Time as such Person or Persons shall submit him, her or themselves to the said Commissioners, and full Answer make, to the Satisfaction of the said Commissioners, to all such Questions as shall be put to him, her or them as aforesaid, and sign and subscribe such Examination as aforesaid, according to the true Intent and Meaning of this Act. (41)

to be particularly specified in the Warrant.

XVII. Provided always, that in Case any Person or Persons shall be committed by the said Commissioners for refusing to answer, or not fully answering any Question or Questions put to him, her or them, by the said Commissioners, by Word of Mouth, or on Interrogatories, that the said Commissioners shall, in their Warrant of Commitment, specify such Question or Questions. (42)

(41.) Where the Bankrupt applied to be brought up again, and the Assignees refused, unless he would pay the Expence, the L. C. directed that if there was no Effects, the Commissioners should meet gratis, receiving their Fees out of the future Effects, if there should be any; adding, that if he should be again committed, for not answering fully, he would find it very difficult to obtain another to bring him up. In the particular Case, I have Reason to know, that the Bankrupt had been examined several Times and given very unsatisfactory Accounts, ex parte Cohen, 18 Ves. 294. The Commitment must follow the Statute, and not be *until the Bankrupt conformed to the Authority of the Commissioners*, Bray's Case, 1 Salk. 348; *till discharged by due Course* of Law, 2 Lord Raym. 851, 1 Salk. 131; *until he shall full Answer make to all such Questions as shall be put to him*, Miller's Case, 2 Bl. Rep. 881, 3 Wils. 420.

(42.) If the Bankrupt after being committed, is brought up again and remanded, there ought to be a new Commitment stating the Cause thereof: per Lord Eldon, "I do not understand this Act, unless it throws upon the Commissioners the Necessity of stating all Questions and Answers, as far as they are applicable to the Subject of the Commitment. The Imprisonment proceeds upon an Answer deemed unsatisfactory: to induce Satisfaction is the Object of it, and if, in the Result of a subsequent Examination, the Imprisonment be continued, it is not the first Examination alone, but all that has occurred on the Subject of the Commitment taken together, that authorizes the Continuance and constitutes that which the Court is called upon to investigate the Cause of Detainer," Combe's Case, 2 Rose, 396, and see Brown's Case, id. 400, (in which no new Questions were put, but the Bankrupt stated what he considered explanatory of his former Examination, and was remanded on the original Commitment), and see the Commitment of Nowlan, subjoined to the two preceding Cases.

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If Habeas Corpus be brought on such Commitment,

XVIII. Provided also, that in Case any Person or Persons committed by the Commissioners' Warrant, by Virtue of this or any other Acts now in Force concerning Bankrupts, shall bring any Habeas Corpus (43) in order to be discharged from any such Commitment, and on the Return of any such Habeas Corpus, there shall appear any such Insufficiency whatsoever in the Form of the Warrant, whereby such Person was committed by Reason whereof the Party might be discharged of such Commitment, that then it shall and may be lawful for the Court or Judge before whom such Party shall be so brought by Habeas Corpus as aforesaid, and such Court or Judge shall, and is hereby required, by Rule, Order or Warrant, to commit such Person or Persons to the same Prison, there to remain as aforesaid, until he, she or they shall conform as aforesaid, unless it shall be made appear to such Court or Judge, by the Party committed, that he, she or they have fully answered all lawful Questions put to him, her or them by the said Commissioners; or in Case such Person was committed for not signing his, her or their Examination, unless it shall appear to such Court or Judge that the Party so committed had a good and sufficient Reason for refusing to sign the same: and in Case any Gaoler or Keeper of any Prison, to whom any such Bankrupt or Bankrupts, Person or Persons shall be so committed as aforesaid shall wilfully suffer such Bankrupt or Bankrupts, Person or Persons to escape from such Prison, or to go without the Walls or Doors of the said Prison, until he, she or they shall be duly discharged as aforesaid, such Gaoler or Keeper shall for such his Offence, being duly convicted by Indictment or Information, forfeit five hundred Pounds of lawful Money of

the Judge may recommit the Prisoner.

Penalty on Gaoler for Escapes, £500

(43.) Lord Hardwicke decided, that he could not determine the Legality of a Commitment on Petition, ex-parte Lingood, 1 Atk. 512, and the same has been held by Lord Eldon, Taylor's Case, 8 Vesey, 300, ex-parte Tomkinson, 10 Ves. 106 It seems very difficult to discover any adequate Reason for restraining that superintending Authority of the Lord Chancellor, sitting in Bankruptcy, as applied to this particular Subject, which is so extensively exercised in every other Part of the System I apprehend that there are many Cases of Commitment in which it might be found very beneficial to enter into the Merits of the Commitment, according to the ordinary Course of proceeding in Bankruptcy, and the Expence of proceeding by Habeas Corpus, to Persons stripped of all Property, is a formidable Impediment to applying for Redress in Case of an objectionable or disputable Commitment. In Rawlin's Case, 11 Ves 511, the Commitment was continued after the Assignees had recovered the Property, of which the Bankrupt had given an unsatisfactory Account Lord Eldon held, on the Return of a Habeas Corpus, that he had no Right to discharge when the Commitment was legal. Mr. Christian properly intimates, that, as the Examination is only for the Discovery of the Property, the Commissioners ought to discharge the Bankrupt when the Enquiry has become unnecessary. See the Observations of Lord Eldon, as to the Course to be pursued by the Commissioners in their Enquiry, and by the Court or Judge on return to a Hab. Corp ex-parte Oliver, 1 Rose, 407.

Great Britain for the Use of the Creditors of such Bankrupt or Bankrupts.

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XIX. And be it further enacted, that the Gaoler or Keeper of such Prison as aforesaid, shall upon Request of any Person or Persons, being a Creditor or Creditors of such Bankrupt, and having proved his, her or their Debt under the said Commission, and producing a Certificate thereof under the Hands of the said Commissioners, or the major Part of them, (which such Commissioners are hereby required to give gratis) forthwith produce and shew such Person or Persons so committed as aforesaid, to any such Creditor or Creditors requesting the same; and in Case such Gaoler or Keeper of such Prison shall refuse to shew, or shall not forthwith produce such Person or Persons so committed as aforesaid, and being in his actual Custody at the Time of such Request, to such Creditor or Creditors of such Bankrupt, requesting to see such Person or Persons committed as aforesaid, such Gaoler or Keeper of such Prison shall forfeit for such his wilful Refusal or Neglect, the Sum of one hundred Pounds of lawful Money of Great Britain for the Use of the Creditors of such Bankrupt or Bankrupts, to be recovered by Action of Debt in any of his Majesty's Courts of Record at Westminster, in the Name or Names of the Creditor or Creditors requesting such Sight of such Prisoner.

Penalty on Gaoler refusing to produce his Prisoner.

XX. And be it further enacted by the Authority aforesaid, that all and every Person and Persons who shall at any Time after the Time allowed to such Bankrupt to surrender and conform as aforesaid, voluntarily come and make Discovery of any Part of such Bankrupt's Estate not before come to the Knowledge of the Assignees, either to the said Assignees, or to the said Commissioners authorized as aforesaid, or the major Part of them, shall be allowed five Pounds per Centum, and such further and other Reward as the Assignees and the major Part of the Creditors in Value present at any Meeting of the Creditors shall think fit, to be paid out of the neat Proceed of such Bankrupt's Estate, which shall be recovered on such Discovery, which shall be paid to the Person or Persons so discovering the same, by the Assignee or Assignees of such Bankrupt's Estate, and the Assignee or Assignees shall be allowed the same in their Accounts.

Allowance to Persons making Discovery of Bankrupt's Estate.

XXI. And for the better Discovery of the Estate of a Bankrupt, be it enacted by the Authority aforesaid, that all and every Person and Persons who shall have accepted of any Trust or Trusts, and shall wilfully conceal or protect any Estate, real or personal, of any Person or Persons becoming Bankrupt as aforesaid, from his, her or their Creditors, and shall not within forty-two Days next after such Commission shall issue forth, and Notice thereof be given in the London Gazette, dis-

Penalty on Persons concealing Effects in Trust.

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cover and disclose such Trust and Estate in Writing to one or more of the Commissioners or Assignees of such Bankrupt or Bankrupts' Estate, and likewise submit him or herself to be examined by the Commissioners, in and by the said Commission authorized, or the major Part of them, if thereunto required, and truly discover the same, shall forfeit the Sum of one hundred Pounds of lawful Money of Great Britain, and double the Value of the Estate either real or personal so concealed, to and for the Use and Benefit of the said Creditors, to be recovered by Action of Debt in any of his Majesty's Courts of Record at Westminster, in the Name of the Assignee or Assignees of the said Commissioners, in which Case full Costs shall be allowed to either Party.

' XXII. And whereas by an Act made in the seventh Year of his late Majesty's Reign, intituled, An Act for the explaining and making more effectual several Acts concerning Bankrupts, Persons taking Bills, Bonds, Promissory Notes, or other personal Security for their Money payable at a future Day, are enabled to prove their Debts under a Commission of Bankruptcy, but not to petition for or join in petitioning for any new Commission, which having been found to be inconvenient:' Now it is hereby enacted by the Authority aforesaid, that so much of the said Act as disables any such Person from petitioning for or joining in any Petition for a Commission against any Person or Persons who have before committed any Act of Bankruptcy is hereby repealed; and it shall and may be lawful hereafter for such Person to petition for or join in petitioning for any such Commission of Bankruptcy; any Thing in the said Act contained to the Contrary thereof in any wise notwithstanding. (44)

Persons having Bonds or Notes may petition for Commissions.

(44.) The Statute of 7 Geo. 1, c. 31, recites, that Merchants had been often obliged to sell their Goods upon Trust or Credit, and to take Bills, Bonds, Promissory Notes, or other Persons' Securities for

[illegible], it was ruled, that the Operation of that Statute was not by the Preamble, restrained to Securities for Goods sold, and the Section now under Consideration, was considered as an Exposition of the preceding Act. In S[illegible]ratt v. Austin, 4 Taunt. 200, Sir J. Mansfield, C. J. after stating the Provision of 7 Geo. 1 and the restrictive Clause, that such a Debt should not suffice for a Petition to sue forth a Commission, says, "Then comes the Statute 5 Geo. 2, c. 30, Sec. 22, which does nothing but repeal the restrictive Clause, that it shall not suffice for a Commission." In Hoskins v. Duperoy, 9 East 498, it was ruled, upon full Consideration of preceding Authorities, (in which there had been some Contradiction) that the Statutes only extend to the Case of written Securities, and, that a Commission where the Petitioning Creditor's Debt consisted in Goods sold, to be paid for by a present Bill, payable in two Months, could not be supported, no Bill having been actually given. It is now provided by 49 Geo. 3, c. 121, (post) Sec. 9, that Debts payable at a fu-

XXIII. And for preventing the taking out Commissions of Bankrupts maliciously, be it enacted by the Authority afore-

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ture Day may be proved, although there is not any written Security, but this does not extend to the suing out a Commission.

In 3 Geo. 2, it was decided, that the Statute 7 Geo. 1, does not apply to contingent Debts, as in the Case of a Bond given by a Person, on Marriage, to pay a Sum of Money to his Wife in Case she should survive him, Tully v. Spinks, 2 Lord Raym. 1546, 2 Str. 867, and this Authority has been followed ever since.

In ex-parte Mitford, 1 Brown, 398, Lord Thurlow allowed a Proof, upon a Covenant in a Marriage Settlement, by the Husband, to pay £3000 at the End of seven Years, by three yearly Installments, but in Case of his Death, within that Time, to be paid within one Year after his Death; a Rebate was ordered, with Reference to the Time when the Payments would become absolutely due.

In ex-parte Barker, 9 Ves. 110, Lord Eldon refused to admit a Proof, upon a Bond to pay £1000 within three Months after the Death of the Obligor. His Lordship held, that the Debt could not be proved under the Statute, if it could not be proved according to the Mode and Terms directed by the Statute. To make Debts capable of Proof, the Statute 7 Geo 1, enacts, that there shall be a Deduction and Rebate of Interest, discounting such Securities payable at future Times. That Operation can be easily gone through, where the Time of Payment is certain, but it is impossible when the Rebate and Reduction is to be made with Reference to a Time, which no Man can assign as the Period. After commenting particularly on the Case ex-parte Mitford, he said, "That Case is against my Opinion upon this Petition, which turns upon this, that the Mode of settling, which is to be proved, necessarily connects itself with the Supposition, that the Debt is to be proved at some Day certain; that where it is to become payable at some future contingent uncertain Time, you cannot apply the Medium of Proof, and it is not capable of Valuation." Mr. Christian, after noticing the Dissent, expressed by Lord Eldon, to the Decision in ex-parte Mitford, asks, "but may not the Trustee or Creditor say, in such a Case, that if it had stood alone, upon the remote Event, I should have had a clear Right to prove, and, as the Bankrupt has added another event, contingent, in Point of Time, but more favourable to me and less favourable to his Estate, I am willing to waive all Claims and Expectations from that Event, and consider the Settlement depending upon that alone, which is capable of Proof in Bankruptcy" Thus considered, he thinks that, the Case may be reconciled with that ex-parte Barton, and all others under the Statute, Vol. 1, p. 117.

I was at first much struck with this Reasoning, but the Question seems to be whether these Arguments could have been opposed to the Creditor in Case the Contingency had happened, upon which he was entitled to the full Payment, immediately after the Bankrupt had obtained his Certificate; for, I apprehend, that it cannot be much a Case of Option, whether the Creditor will have the Benefit of the Commission or retain the personal Liability of the Bankrupt, and, that the Question must, in all Cases, be decided by the Operation of an uniform Principle of Law. In ex-parte Whittaker, 1 Rose, 501, it was ruled, that the Petitioner could not set off a present Debt, due to her from the Bankrupt, against a Sum, payable by her Executors, within six Months after her Death. In ex-parte Alcock, 1 Rose, 323, 1 V. and B. 176, it was ruled, that there could be no Proof, upon an Engagement to transfer Stock within one Month after Request; and see ex-parte King, ex-parte Mare, 8 Ves. 334.

See also ex-parte Minet, 14 Ves. 189, ex-parte Gardom, 15 Ves,

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said, that no Commission of Bankrupt under the Great Seal of Great Britain shall, after the twenty-fourth Day of June, one thousand seven hundred and thirty-two, be awarded and issued out against any Person whatsoever, upon the Petition of one or more Creditors, unless the single Debt of the Creditor, or of two or more Persons being Partners, petitioning for the same, do amount to the Sum of one hundred Pounds or upwards, or unless the Debt of two Creditors, so petitioning as aforesaid, shall amount to one hundred and fifty Pounds or upwards, or unless the Debt of three or more Creditors, so petitioning aforesaid, shall amount to two hundred Pounds (45) or upwards, (46) and the Creditor or Creditors petitioning for such Commission

286, in which Proofs were refused, on Engagements for the guarrantee of Debts, as being contingent at the Time of the Bankruptcy.

In the Matter of Meaghan, 1 Sch. and Lef. 179, Lord Redesdale allowed a Bond for Payment, by a Husband, of £1000, in the Event of his Failure or Bankruptcy, to be proved so far the Wife's Fortune, but not beyond. The same was ruled by Lord Eldon, in exparte Linton, 14 Ves. 598.

In Sarratt v. Austin, 4 Taunt. 200, it was ruled, that when two Persons had given mutual Acceptances, the one could not take out a Commission against the other, not having paid his own. Lord Mansfield, C. J. "The Debt is not in the Face of the Instrument contingent, but it is so far contingent, that, till the Drawer has paid his Counter Bill, the Court of Chancery will restrain him from receiving any Dividend: therefore, although it is on the Face of the Instrument, a Debt payable at a future Time, it is, in it's Nature, a contingent Debt."

Mr. Christian observes, that in the Choice of Assignees, and in the Signature of the Certificate by the Creditors, the whole Debt must be considered, as in all other Proofs, (the Deduction, as to Rebate only applying to the Dividends).

The Cases respecting the Proof of an Annuity or a contingent Debt, on Account of there being a Bond with a Penalty previously forfeited, are not in any wise referable to the Consideration of the Section which is the Subject of the present Note.

(45.) Query, if the Commission is good, when £100 is due to one of the three, but not £200 to all, Smith v. Milles, 1 T. R. 475—semble not, 1 Christ. 214.

(46.) For the History of the Law, as to the Petitioning Creditor's Debt, see Christian's Note on this Section. It was always necessary that the Commission should issue on the Petition of a Creditor. The Amount was first regulated by Statute 5 Anne, c. 22, in the same Manner as at present, but it was previously the Practice to require an Affidavit, that the Bankrupt was indebted to the Petitioner and other Creditors, to the Amount of £100, Goodinge, pa. 2, cited 1 Christ. 206. The Law, as to the Proof of Debts, has been considered in n. to Sect. 7, ante. But the Right to petition is much less extensive than the Right to prove, as the Petition must be founded upon a legal Debt. Medlicott's Case, Str. 899, ex-parte Lee, 1 P. Wms. 783, Small v. Oudley, 2 P. Wms. 427. On the other Hand, I take it to be clear, that no Debt which cannot be proved, can be the Ground of a Petition. An unsettled Balance, on a Partnership Account, is not sufficient, secus as to a liquidated Balance, ex-parte Nokes, 2 Mont. 148. The same Distinction is familiar as to an Action at Law. The Money awarded under an Arbitration Bond, is a good Debt, Flower v. Herbert, 2 Ves.

shall, before the same shall be granted, make an Affidavit, or (being one of the People called Quakers) make a solemn Affir-

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327, ex-parte Lingood, 1 Atk. 241, (the Point is put upon the Arbitration Bond being a Debt at Law, but wherever there is a proper Submission, I conceive that an Action of Debt may be maintained on the Award); against a Surety, Heylor v. Hull, Palm. 325. Upon an Attorney's Bill not delivered a Month before, according to Stat. 2. Geo. 2, c. 23; but it is quite of Course, upon Petition, to refer the Bill to the Master to be taxed, ex-parte Howell, 1 Rose, 312. Against one of several Partners for a joint Debt, ex-parte Crisp, 1 Atk. 131, Crisp v. Perritt, Willes, 467. Upon a Debt due to Partners, all must join, Buckland v. Newsame, 1 Taunt. 477. So Husband and Wife, for a Debt to the Wife, dum sola, ex-parte Scaples, 7 Vin. 67, Rumsey v. George, 1 M. and S. 176. It was ruled, in Cohen v. Cunningham, 8 T. R. 123, that a Creditor having his Debtor in Execution, cannot petition, see Christian's Review of this Case, and the preceding Authorities, which seem contra. Lord Eldon has lately decided, that a Debt, barred by the Statute of Limitations, will not support a Commission, and cannot be proved, ex-parte Dewdney, 15 Ves. 498, ex-parte Roffey, 2 R. 59, 245, uponwhich also see Observations ibid, and as to the general Operation and Effect of the Statute of Limitations, see Note subjoined to Sec. 8, ante. In ex-parte Goodwin, 1 Atk. 100, it was held that no Commission could issue on the Petition of the Executor of an uncertificated Bankrupt, but the Right of the Bankrupt to sue, where the Assignees do not interpose, having been established by the Series of Cases referred to in n. to Stat. 13 Eliz. c. 7, Sec. 10, ante No 2. Lord Eldon, in ex parte Cartwright, 2 Rose, 230, expressed his Opinion in Favour of a Commission taken out by such Bankrupt. The Petition stood over that Notice might be given to the Assignees. If the Right is admitted, as to the Bankrupt, it will of Course extend to his Executors.

The Debt must have subsisted while the Party was in Trade, Meggott v. Mills, 12 Mod. 159, 1 Lord Raym. 287, Butcher v. Easto, Doug. 295; but the Commission will be good, although the Act of Bankruptcy is committed after, ex-parte Bamford, 15 Ves. 458. It is now agreed, that the Petitioning Creditor's Debt must exist at the Time of the Act of Bankruptcy, see Doe v. Boulcot, 2 Esp. Cas. 595, Bullock's Case, 1 Taunt. 88, Beardmore v. Shaw, 1 N. R. 265, see also the several other Cases mentioned, 1 Christ. 202, 212, and the Observations thereon; but if the Debt is subsisting before the Act of Bankruptcy, it is not extinguished by taking a Bond, Ambrose v. Clendon, 2 Str. 1042, Temp. Hard. 267; or by recovering Judgment, Bryant v. Withers, 2 Rose, 8, 2 M. and S. 123.

A Creditor who has received Payment, after Notice of an Act of Bankruptcy, may Petition, as he thereby waives his Claim to the Payment, Mann v. Shepherd, 6 T. R. 79.

As to Objections to the Validity of Commissions in Consequence of Acts of Bankruptcy previous to the Petitioning Creditor's Debt, see post, 46 Geo. 3, c. 135, Sec. 5.

By a general Order, (Nov. 1798), the Petitioning Creditor must attend at the Opening of the Commission, and be examined as to the Nature of his Debt, and the Depositions must be entered on the Proceedings. Before the Order, it was sufficient to produce an Office Copy of the Affidavit upon which the Commission was obtained. The L. C. may, by a special Order, dispense with the general Order for sufficient Cause, as, where it appeared, that the Petitioning Creditor could not attend without Hazard of his Life, ex-parte Edwards, 9 Ves. 318.

It

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mation in Writing before one of the Masters of the High Court of Chancery, (which Oath or Affirmation they are hereby impowered to administer, and which shall be filed with the proper Officer) of the Truth and Reality of such his, her and their respective Debt and Debts. (47) likewise give Bond (48) to the Lord Chancellor, Lord Keeper or Commissioners of the Great Seal for the Time being, in the Penalty of two hundred Pounds, to be conditioned for proving his, her or their Debts as well before the Commissioners named in such Commission as upon a Trial at Law, in Case the due issuing forth of the same shall be contested and tried, and also for proving the Party a Bankrupt at the Time of taking out such Commission, and further to proceed on such Commission as hereinafter is mentioned; and if such Debt or Debts shall not be really due or owing, or if after such Commission taken out, it cannot be proved that the Party was a Bankrupt at the Time of the issuing of the said Commission, but on the Contrary it shall appear that such Commission was taken out fraudulently or maliciously, (49) that then the Lord Chancellor, Lord Keeper or Commissioners of the Great Seal for the Time being, shall and may, upon Petition of the Party or Parties grieved, (50) examine into the same, and order Satisfaction to be made to him, her or them, for the Damages by him, her or them sustained; and for the better Recovery thereof may, in Case there be Oc-

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It is not necessary, that the Creditor, in Order to support the Commission, should negative having a Security, or produce his Securities to be exhibited; but there must be a second Proof, at a public Meeting, to entitle him to vote in the Choice of Assignees, receive a Dividend, or sign the Certificate.

As to the Obligation of the Petitioning Creditor, to supply the necessary Evidence of his Debt, in Case of the Commission's being contested, see ex-parte Glossop, 2 Rose, 386.

(47) This Provision is only directory, and the Commission is not void, although, upon the Affidavit, the Debt may appear to be less than the requisite Amount, Hill v. Heale, 2 n. R. 196. The Affidavit of believing that the Person, against whom the Commission is prayed, is a Bankrupt, is not required by Statute, but was in Use previous to the Statute 4 and 5 Anne. Lord Kenyon, in Gardner v. Wilkinson, 8 T. R. 507, supposed the Affidavit to be required by Statute, and, on that Ground, it was held that, upon an Act of Bankruptcy by lying two Months in Prison the Commission could not issue until the End of the two Months, although the Bankruptcy has Relation to the first Arrest, see 1 Christian, 214, and Wydown's Case, 14 Ves. 88 In that Case it was held, that a Commission was valid if the Act of Bankruptcy was committed at any Time previous to its being sealed, even on the same Day.

(48.) As an Infant cannot give Bond, he cannot petition, Flower v. Herbert, 2 Ves. 326.

(49.) The Lord Chancellor is sole Judge of this, and it cannot be pleaded to an Action on the Bond, that the Commission was not taken out fraudulently and maliciously, Smith v. Broomhead, 7 T. R. 300.

(50.) The Bond may be assigned to a Creditor, as a Party aggrieved, Smithey v. Edmondson, 3 East, 22.

asion, assign such Bond or Bonds to the Party or Parties so petitioning, who may sue for the same in his, her and their Name and Names; any Law, Custom or Usage to the Contrary notwithstanding. (51)

XXIV. And whereas Commissions of Bankrupts are frequently taken out by Persons who by Means of such Commissions (on a Composition proposed by the Bankrupts) and on Promise not to execute the same, prevail with and extort from the Bankrupts their whole Debts, or much greater Part thereof than such Bankrupts pay to their Creditors, or otherwise get from such Bankrupts Goods or other real or personal Security, which is contrary to the true Intent and Meaning of the several Statutes made concerning Bankrupts, which said Statutes intend, that all such Bankrupts' Creditors shall be on an equal Foot, and not one preferred before another, or paid more than another in Respect of his or her Debt: be it therefore enacted by the Authority aforesaid, that if any Bankrupt or Bankrupts shall, after (52) issuing any Commission against him, her or them, pay to the Person or Persons who sued out the same, or otherwise give or deliver to such Person or Persons Goods or any other Satisfaction or Security for his, her or their Debt, whereby such Person or Persons suing out such Commission shall (53) privately have and receive more in the Pound in Respect of his, her or their Debt, than the other Creditors, such Payment of Money, Delivery of Goods, or giving greater or other Security or Satisfaction, shall be deemed and taken to

Commissions fraudulently obtained to be superseded.

(51.) The Lord Chancellor may order the whole, or a Part of the Penalty, to be paid at his Discretion, and may order an Enquiry by the Master or an Issue to ascertain the Damages, ex-parte Gayter, 1 Atk. 144. The Bond may be assigned and put in Suit after Payment of Costs and refunding a Sum of Money, pursuant to Order on the same Petition, and semble that no Assignment of Breaches under 8 and 9 W. 3, c. 11 Sec. 8, is necessary, Smithey v. Edmondson, 3 East, 22. Where the Petitioner had himself become Bankrupt, the L. C. ordered a particular Sum to be proved, under the Commission, in Respect of the *Bond*, ex-parte Rimene, 14 Ves. 600. The Bankrupt may recover at Law, for suing out a malicious Commission, Brown v. Chapman, Bur. 1411, Chapman v. Pickersgill, 2 Wils. 145. In ex parte Fletcher, 1 *Rose*, 454, Lord Eldon said, he was not in the Habit of assigning the Bond, because that is conclusive, at Law, against the Defendant, without being more advantageous to the Party injured, who may have a better Remedy by Action on the Case. As to the Form of the Bond, see Wydown's Case, 14 Ves. 80, and Observations, 1 Chr. 213.

(52.) It is now settled that this Provision only applies in Case of a Commission having issued, and not upon merely striking a Docket, although the Court, in the latter Case, may direct the Money to be refunded, &c. on the Ground of Contempt, ex-parte Browne, 15 Ves. 472; see ex-parte Thomson, 1 Ves. Jun. 157, ex-parte Gedge, 5 Ves. 349, Wydown's Case, 14 Ves. 85.

(53.) The Word *shall* is to be construed as *may*. A Creditor taking a Security, in the Case proposed, forfeits his Debt; the Transaction is private, although one or two individual Creditors may know of it, ex-parte Paxton, 15 Ves. 461.

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be such an Act of Bankruptcy, whereby on good Proof thereof such Commission shall and may be superseded; and it shall be lawful for the Lord Chancellor, Lord Keeper or Commissioners for the Custody of the Great Seal of Great Britain for the Time being, to award to any Creditor or Creditors petitioning another Commission; (54) and such Person or Persons so taking or receiving such Goods or other Satisfaction as aforesaid, shall forfeit and lose as well his, her or their whole Debt, as the whole he she or they shall have taken or received, and shall pay back and deliver up the same or the full Value thereof to such Person or Persons as the said Commissioners acting under such new Commission shall appoint, in Trust for and to be divided amongst the other of the Bankrupt's Creditors in Proportion to their respective Debts.

and another awarded.

Penalty.

The Charge of Commission to be paid by the Assignees.

XXV. And be it further enacted by the Authority aforesaid, that the Creditor or Creditors who shall Petition for and obtain any Commission of Bankrupt, shall be, and is and are hereby obliged, at his, her or their own Costs and Expences, to sue forth and prosecute the same, until an Assignee or Assignees shall be chosen of such Bankrupt's Estate and Effects; and the Commissioners to be named in any such Commission shall, at the same Meeting which shall be appointed for the Choice of the Assignees, ascertain such Costs, and by Writing under their Hands shall direct and order the Assignee or Assignees of such Bankrupt's Estate, who is and are hereby required to pay and reimburse such petitioning Creditor or Creditors such his, her or their Costs and Charges as aforesaid, out of the first Monies or Effects of the said Bankrupt that shall be got in and received under the said Commission; and every Creditor of the said Bankrupt shall be at Liberty to prove his, her or their Debt or Debts under the said Commission, without paying any Contribution or Sum of Money whatsoever for or on Account of such Debt or Debts; any Law or Statute to the Contrary notwithstanding. (55)

Creditors may prove Debts without paying Contribution.

XXVI. And be it further enacted by the Authority aforesaid, that where any Commission of Bankrupt shall issue out from and after the twenty-fourth Day of June, one thousand seven hundred and thirty two, the Commissioners therein named, or the major Part of them thereby authorized, shall forthwith, after they have declared the Person or Persons against whom such Commission shall issue a Bankrupt or Bankrupts, cause Notice thereof to be given in the London Gazette, and shall appoint a Time and Place for the Creditors to meet, which

Notice of Meeting to be given in the Gazette.

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(54) Query, if it is necessary to prove any other Act of Bankruptcy, in Consequence of the Expression *if any* BANKRUPT *shall after the issuing of any Commission, &c,* semble not, see ex-parte Paxton, 15 Ves. 461, Observations, 1 Christian, 247.

(55.) Sec. 1, Jac. c. 15, (ante No. 5) Sec. 4 and Note.

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Meeting for the City of London and all Places within the Bills of Mortality shall be at the Guildhall of the said City, (56) in order to choose an Assignee or Assignees of the said Bankrupt's Estate and Effects; at which Meeting the said Commissioners shall admit of the Proof of any Creditor's Debt, (57) that shall live remote from the Place of such Meeting of the Commissioners, by Affidavit, or being of the People called Quakers, by solemn Affirmation, and also permit any Person duly authorized by Letter of Attorney, from such Creditors, Oath or Affirmation being made of the due Execution thereof, either by an Affidavit sworn or [illegible] made before a Master in Chancery, ordinary or ex[illegible], or before the Commissioners *viva voce* (which Oath [illegible] Affirmation they are hereby resp[illegible]ely authorized to adm[illegible]) and in Case of Creditors [illegible] in foreign Parts, such [illegible] or solemn Affirmation [illegible] before a Mag[illegible] where the Party shall be residin[illegible] together with such Creditor's Letters of Attorney, [illegible] by a Notary Public, to vote in the Choice of an [illegible] Assignees of such Bankrupt's Estate and Effects in [illegible] and Stead of such Creditor, and the Commission[illegible] or the major Part of them authorized, shall assign over [illegible] Bankrupt's Estate and Effects unto such Person or Persons [illegible] as the major Part in V[illegible] of such Creditors, ac-

Debts how to be proved.

Choice of Assignees;

(56) See Observations, as to the Place of executing Commissions in [illegible], [illegible] Rom Sec. 22.

(57) As to Proof of Debts, see ante, n. 12.

([illegible]) In Cooper's Case, Green, B. L. 260, the Bankrupt having become the Representative of the Assignee, is reported to have been allowed to choose himself Assignee under his own Commission; but in 2 Rose, 222, n. it is said that, no trace of the Case could be found in the Books at the Bankrupt Office; and in ex-parte Jackson, 2 Rose, 22[illegible], it was held, that the Bankrupt, although certificated, could not be appointed Assignee, upon the Removal of former Assignees; and the Lord Chancellor said, that it is the daily Practice, where the Majority of Creditors choose an Assignee who has Interests adverse to those of the Minority, for the latter to apply to the Court for a Removal. In ex-parte De Tastet, 1 Rose, 3[illegible], it was held, that the Court would not prevent a Creditor, having Interests adverse to those of the Creditors at large, from electing himself Assignee, in the first Instance, if his Proof will enable him so to do, but he will be removed, or an Arrangement will be made, so as to prevent his Office of Assignee interfering with the due Investigation of his Claims. In ex-parte Surtees, 12 Ves. 10, Lord Erskine said, "The Choice is given to the Creditors, subject to a Controul, the largest, most general, and unqualified of any of the Authorities given to the Lord Chancellor in Bankruptcy. As to the Principle upon which an Assignee may be removed, I take the Rule to be this, either that there must be some Misconduct imputed to him, or, where an Account is to be taken, it must appear, that the Account cannot be taken conveniently or justly, or so conveniently or justly, while that Person remains an Assignee, and it is thrown upon the Parties who seek to remove the Assignee, to establish that otherwise the Account cannot be conveniently taken." As to the Removal of Assignees, see post, Sec. 31.

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cording to the several Debts then proved, shall choose as aforesaid, (59) and the Assignee or Assignees so chosen shall be obliged to keep one or more distinct Book or Books of Account, wherein he or they shall duly enter all Sum and Sums of Money or Effects, which he or they shall have got in or received out of the said Bankrupt's Estate, to which Book or Books of Account every Creditor who shall have proved his or her Debt shall at all seasonable Times have free Resort and inspect the same as often as he or she shall think fit.

What Persons not qualified to choose.

XXVII. Provided always, and be it enacted by the Authority aforesaid, that no Creditor or any other Person for and on the Behalf of any Creditor shall be permitted to vote in such Choice of Assignee or Assignees, whose Debt or the Debt of the Person or Persons so authorizing him to vote, shall not amount to the Sum of ten Pounds or upwards.

Mutual Credit to be settled.

XXVIII. And be it further enacted by the Authority aforesaid, that where it shall appear to the said Commissioners, or the major Part of them, that there hath been mutual Credit given by the Bankrupt and any other Person, or mutual Debts between the Bankrupt and any other Person, at any Time before such Person became Bankrupt, the said Commissioners, or

(59.) As to the Manner of declaring the Choice of Assignees, where there are several different Sets of Creditors voting, see Let. Rom. Sec. xx. as to the Choice in Respect of joint and separate Creditors, see ibid. xxxi. 5. A Choice will not be set aside because Creditors were abroad or otherwise, by Accident, prevented from voting, ex-parte Cregnier, 1 Atk. 20. In ex-parte Surtees, 12 Ves. 10, Lord Erskine said " It is properly admitted, that the Circumstance that some Creditors, whose Votes would have turn'd the Scale, were absent by Accident, is not sufficient. But if Creditors were kept back by Fraud, Assignees, chosen under such Circumstances, should be set aside." In ex-parte Butterfill, 1 Rose, 192, Lord Eldon said, " It frequently happens, that the Accounts of Creditors are in that unravelled State that they are not prepared to establish their Proofs, but the Proceedings, under a Commission, are not stopped on that Ground. It is a general Rule that the Appointment of Assignees will not be disturbed, when chosen by those who can make immediate Proof; although those who may not have been prepared to do so, would have turned the Scale. It is not an universal Rule, though almost an universal Rule, the Removal of Assignees being Matter of subsequent Discretion in the Great Seal." In ex-parte Garland, 2 Rose, 361, a Creditor, to an Amount which would have considerably influenced or controled the Choice of Assignees, being prevented attending by Indisposition, the Commissioners adjourned the Choice after some Creditors had voted, and, upon a Petition that an Assignment might be made to the Persons chosen by such Creditors, the Vice Chancellor thought, the contemporaneous and continued Practice of Commissioners, unopposed by any direct Decision, was the best Exposition of the Statute; that a Power of Adjournment was not withheld by any express Words, and was a discretionary Incident to their Functions upon the Ground of Convenience, and upon general Principles applicable to all Jurisdictions.

General Assignees were first directed to be appointed by 5 Anne, c. 22. For the Progress of the Law upon this Subject, see 1 Christ. 253, 277.

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the major Part of them, or the Assignees of such Bankrupt's Estate, shall state the Account between them, and one Debt may be set against another; and what shall appear to be due on either Side on the Balance of such Account, and on setting such Debts against one another, and no more, shall be claimed or paid on either Side respectively. (60)

SET-OFF.

(60) The general Law of Set-off, in Cases not affected by Bankruptcy, and as depending upon Statutes 2 Geo. 2, c. 22, 8 Geo. 2, c. 24, has been considered in a former Part of this Work, see P. W. Class 7. In the present Note it is intended only to refer to the Provision contained in the Section to which it is attached, as particularly relating to Set-off in Cases of Bankruptcy, and as distinguished from the general Right above alluded to, than which it is more comprehensive. But it is proper to premise, that in Ridout v. Brough, Cowp. 133, it was ruled, that the general Statutes of Set-off extend to the Case of Actions brought by Assignees, contrary to the preceding Determination in Ryall v. Larkin, 1 Wils 155. In the late Case of Stanforth v. Fellows, 1 Marsh, 184, where two only, of three Partners, had become Bankrupts, and the Action was brought by the solvent Partner and the Assignees of the Bankrupts, it was ruled, that the Case could not be brought within the Rule of mutual Credit in Bankruptcy. Mr. Christian observes, that although this could not be balanced by the Bankrupt Statutes, yet the Defendant could have had the Benefit of the Statutes of Set-off, (as he conceives) if he had either pleaded the Set-off or given Notice of Set-off, Vol. 3, pa. 316; I fully accede to this Observation, as applicable to Cases within the Statutes of Set-off, but the particular Case was not of that Description, being an Action of Tort, (vide 2 Rose, 151.)

In many reported Cases it is not very clear, whether the Determination was in Respect of the Doctrine of Set-off in Bankruptcy or on Account of the general Right of Lien, which depends upon totally different Principles.

It is generally supposed, and has been often stated, that the Right of Set-off was introduced into the Law by the Bankrupt Act of 4 and 5 Anne, c. 17, in which it is first expressly mentioned. But Mr. Christian has clearly shewn, that the Course of adjusting the Balance was previously adopted in Practice and confirmed by the Decisions of Courts of Law, see 1 Christ. 279, and Goodinge, B. L. 190, Anon 1 Mod 215, Chapman v. Derby, 2 Vern. 117, there cited.

The Distinction from the ordinary Cases of Set-off, which is allowed in Cases of Bankruptcy, is referred to the Expression of mutual Credit, as having a more extended Operation than *mutual Debts.* The Distinction between mutual Debts and mutual Credit is first expressly made by Lord Hardwicke, in ex parte Prescot, 1 Atk. 231. The same difference of Expression is noticed by Lord Mansfield and Buller J. in French v. Fenn, Co. B. L. 554, and by Lord Kenyon, in Atkinson v. Elliott, 7 T. R. 378, and is now generally familiar.

Mr. Christian observes, (Vol. 1, pa. 282,) with Reference to this Distinction, that if Credit and Debt are correlative Terms, and if one cannot exist without the other, he does not see how it is material to call it one or the other. In the two expired Statutes the Words *mutual credit* are used alone, and to remove all Doubts whether these Words did not mean a mutual Debt, both Words are used in this Section.—As to this Observation it is very true that in a large and extended Signification the Words *Debt* and *Credit* are correlative; but the Word *Debt* has also a more confined and limited Signification as denoting a particular Sum of Money actually due and which, as such Debt may be sued for at Law in the common Action of Debt or Indebitatus-as-

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Penalty on Debts falsely claimed.

'XXIX. And whereas many Abuses have been committed by pretended Creditors of Bankrupts,' be it enacted by

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sumpsit, and which, in that Point of View, is the immediate Object of of the general Statutes of Set-off, as distinguished from the more extensive Term of *Credit*, applied to the Case in Bankruptcy; and, as the Distinction of Expression applied to the respective Cases is both intelligible in itself and familiar in its Application, I think there will be much more Convenience in adhering to it, than in attempting to substitute any other Term of Designation.

In Lord Lanesborough v Jones, 1 P. Wms. 325, Jones mortgaged to Coggs, and Coggs gave Notes to Jones and to others as Trustees for Jones, and Jones had the Notes in his Possession. An Act of Parliament having vested the Estate of Coggs in the Plaintiffs, in Trust for his Creditors, they insisted that he should pay all the Mortgage Money and come in under the Commission. But it was decreed, by L. C. Cowper, that, in regard by the late Statute 4 Anne, c. 17, where there is a mutual Credit between a Bankrupt and another, only the Balance shall be paid. So, in this Case, there was a plain mutual Credit, Coggs gave Credit to Jones on the Mortgage, and Jones gave Credit to Coggs on the Notes, and, therefore, the Balance only should be paid; and this Clause in the Statute was not to be construed of Dealings in Trade only, or in Case of mutual running Accounts, but, that it was natural Justice and Equity, that in all Cases of mutual Credit, the Balance only should be paid, and that the Commissioners or Trustees, in this Act of Parliament, should not be in a better Condition than Coggs himself would have been; that if, instead of the present Bill, which was to foreclose the Mortgage, Coggs himself, before his Bankruptcy, had brought such a Bill, surely no more than the Balance should have been allowed him, and that there was no Reason that Jones should suffer by the Accident of Coggs's Bankruptcy; neither could the Commissioners, or, if Coggs had been in the Case of a common Bankrupt, could the Assignees be in a better Condition than Coggs himself would have been.

I have inserted this Extract, as the Case is always cited as one founded upon the Construction of the then existing Statute of Bankruptcy, (the Provision of which is substantially adopted in the Section at present under Consideration,) but, although the Statute is referred to as forming an Ingredient in the Determination, it is manifest, that it was in no Respect applicable to the Case, and seems, if I may use the Expression, to have been brought in by the Head and Shoulders, (the Act by which the Estate was vested in Trustees, not having, so far as it appears, any Reference whatever to the Provisions respecting Bankruptcy.) The Case assumes, that Jones would have had the same Relief if the Suit had been commenced by Coggs himself, and considers the Trustees as standing in his Place, whereas, the Operation of the Bankruptcy Statutes is to create a Right in Respect of balancing the respective Claims, in the Event of Bankruptcy, more extensive than that which would have existed between the Parties if no such Bankruptcy had taken place. The Effect of the Case referred to, so far as the Decision goes, seems to be general, that a Suit of Foreclosure shall not be permitted, where the Mortgagee is indebted to the Mortgagor to the Amount due on the Mortgage, (and this, as already observed, independently of any Question of Bankruptcy.) And, I apprehend, that the Question, whether the Assignees of a Mortgagee shall be compelled to re-convey, the Mortgagor having a collateral Debt to the same Amount; or, what is the same Thing, whether the Mortgagor shall be allowed to redeem on Payment of the Balance, is not yet affected by any Decision, or, more particularly, by any Decision

the Authority aforesaid, that if any Person at any Time here-

resting on the Distinction of the particular Law of Set-off, as applicable to Cases of Bankruptcy.

In ex-parte Prescott, 1 Atk. 231, it was ruled, that the Statute extended to setting-off a Debt due by the Bankrupt, upon Bond payable at a future Day, against a present Debt to the Bankrupt upon simple Contract, and this Principle is admitted in the subsequent Cases, particularly in Atkinson v. Elliott, 7 T. R. 378, where the Defendants sold the Bankrupt two Parcels of Goods, at different Times, upon six Months' Credit, and, after the Price of one of the Parcels of Goods became due, received from him a Bill of Exchange for a larger Amount, giving a written Undertaking to pay the Difference upon receiving the Amount of the Bill: the Amount was received before the Bankruptcy, and the Price of the second Parcel did not become due until afterwards, but was allowed to be Set-off.

But no Set-off can be admitted if the Debt, at the Time of the Bankruptcy, is contingent. This was first laid down incidentally by Lord Hardwicke, in ex-parte Groome, 1 Atk. 115, in which the Point decided was, that an Engagement by a Husband, to pay a Sum of Money to his Wife, in Case of her surviving, was not provable under the Provisions of 7th Geo. 1, c. 31. The same Doctrine was applied in Hancock v. Entwistle, 3 T. R. 435, where the Bankrupt (in Consequence of a loss sustained in a transaction in which he had acted as Broker for the Defendant) agreed, from Time to Time within the Space of four Years, to recommend Lots of Cotton to be purchased by the Defendant, and that, if the clear Profits, within that Time, should not amount to £1900, and he should be then living, he would pay the Difference. It may here be proper to mention the Case of ex-parte Blagden, 2 Rose, 249, in which it was held, that an Underwriter could not set off a Debt due before the Bankruptcy against a Loss arising after. The L. C. said, the Benefit of the Policy, which arose upon the Capture, was not an Interest in the Bankrupt, but a Cause of Action in the Assignees. And see Glennie v. Edmunds, 4 Taunt. 775, in which it was held, that an Underwriter could not set-off Premiums due before the Bankruptcy, against either a Loss or a Return of Premium accruing afterwards. In ex-parte Whittaker, 1 Rose, 301, it was held, that a Person who had engaged, in Consideration of an Annuity, that her Executors should, on her Death, pay the Bankrupt £2,000, and was a Creditor of the Bankrupt for a larger Sum, could not have the Value of the £2,000 ascertained and prove for the Deficiency; and, by Lord Eldon, "If she could not be compelled to pay you in Advance, what Right has she to make you take in Advance? It is impossible to anticipate it and make it Matter of Set-off."

In French v. Fenn, Co. B. L. 554, Goods were purchased by Cox, Holford and Fenn, to be sold for their joint Account. Fenn advanced the Money, Cox became Bankrupt, indebted to Fenn, and it was held that Fenn might set off his Debt against Cox's Share of the Profits on the Sale of the Goods, which Sale was subsequent to the Bankruptcy—per Lord Mansfield, "There is no Doubt but there was a mutual Credit; Cox had trusted him with the Goods, and he had trusted Cox with other Goods."—Buller, J. "When there is a Trust between two Men on each Side, that makes a mutual Credit." In Whitehead v. Vaughan, Co. B. L. 560, the Defendant, an Insurance Broker, being a Creditor of the Bankrupt, for Premiums, &c. obtained from him a Policy, upon which an Average Loss had been incurred under Pretence of receiving the Average, with a View to hold it as a Security for his Demand, but did not tell him his Intention. The Loss was adjusted, and the Money received thereon by the Defendant, after the Bankruptcy; and it was ruled that he was entitled to set off his Debt against

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after shall, before the Acting Commissioners in any Commission

the Claims of the Assignees—Lord Mansfield said, "There is Evidence of the mutual Account, and I think there is a Lien"—"It is the Justice of the Case that there should be a general Lien, and the Lien revives when the Policy comes again into the Hands of the Broker."—Buller, J. "I considered it as a settled Point, that there is a general Lien on Policies in the Hands of the Insurance Broker. He said, the Plaintiff was wrong every Way—First, the Bankrupt had a good Cause of Action before the Bankruptcy, for this Debt was due before the Bankruptcy, although not ascertained—Secondly, the Statute is decisive, for by that the Balance only is the Debt. In Parker v. Carter, Co. B. L. 567, a Broker, who effected a Policy, was held to be entitled to set off the Balance owing to him, against the Money received by him, on a Loss that took place after the Bankruptcy. The Case seems to have been put rather on the Ground of their Right as Brokers and general Agents, than upon the Effect of the Statute; and it is observable that the Ground of Lien, which is wholly independent of all Questions of Bankruptcy, was materially relied upon in the preceding Case of Whitehead and Vaughan; but in the late Case of Olive v. Smith, 5 Taunt. 56, in which it was held that the Broker had a Right to set off a Debt for Advance of Money against a Loss which occurred, and on which the Insurance was paid after the Bankruptcy—the Decision was principally referred to the Operation of the Provisions at present under Consideration: Gibbs, J. at the Trial stated that the Bankrupts had trusted the Defendants with the Possession of Goods and of Policies of Insurance, and that the Defendants had trusted the Bankrupt with the Money advanced, &c. partly on the Security of the Policies; and that the general Principle was, wherever each Party has trusted the other with the Possession of Value, the Assignees of either becoming a Bankrupt, cannot withdraw that Value from the other, but on the Terms of paying what is due between them; and by Mansfield, C. J. "The Case of Parker v. Carter runs on all-fours with the present Case; French and Fenn, and ex-parte Prescot, are also prodigiously strong.—Some of the Cases seem to have gone further than the Words of the Statute would clearly warrant, and say that wherever there is a mutual Trust the Balance only should be paid, I should have thought that the Statute meant only Money Transactions; but if the Extension of mutual Credit be, as it has been contended, a mistaken Doctrine, the Mistake is so deeply rooted, it having been again and again confirmed, that it would be rash indeed to overturn it; and there is a great Deal of Justice in the Determination at which not only the Court of King's Bench, but the Court of Chancery, have arrived on this Point." Lord Kenyon, in Atkinson v. Elliott, (supra) said that he agreed to what was said by Mr. J. Buller, that where there is a Trust between both Parties, there is a mutual Credit.

But Query, whether some of the Expressions in Olive v. Smith, do not go beyond what the Law upon the Subject will fairly warrant; and whether the mutual Trusts are not to be limited to Cases in which, from their Nature, there is an Authority to convert the Property into Money. In ex-parte Deeze, 1 Atk. 228, Lord Hardwicke held, upon general Principles, that a Packer might retain Goods until he was paid his general Balance; but it is now perfectly settled and familiar, that a Person to whom Goods are entrusted for any Operation in the Course of Business, cannot by Force of the Statutes of Bankruptcy retain them against Assignees for a general Balance; and that there must for that Purpose be either a Contract or a Custom, and the great Struggle has usually been as to the Existence of Customs in particular Trades, or the Effect of general Notices, as amounting to a Contract.

In Smith v. Hodson, 4 T. R. 211, the Defendants accepted a Bill

of Bankrupt, or by Affidavit or Affirmation exhibited to

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for the Accommodation of the Bankrupts, and the Bankrupts afterwards sold Goods to the Defendants in Contemplation of the Bankruptcy, and with the Intention of giving them an undue Preference. It was held, that the Assignees having brought their Action for Goods sold and delivered, the Defendant was entitled to set off the Amount of the Acceptance, the Sale being affirmed by the Form in which the Action was brought, although the Assignees might have disaffirmed it by declaring in Trover, but that they could blow hot and cold. Lord Kenyon, in delivering the Opinion of the Court, referred to the Statute, but said the Assignees, by bringing the Action on the Contract, recognized the Act of the Bankrupt, and must be bound by the Transaction, in the same Manner as the Bankrupt himself would have been. If he had brought the Action, the whole Amount must have been settled, and the Defendant would have had a Right to have set-off the Amount of the Bill. In this latter Observation the peculiar Effect of the Statute, in giving an Operation to mutual Credit in the Case of Bankruptcy, beyond that which would subsist as between the Parties to the Transaction, seems to have been overlooked. The Amount of the Acceptance was, in Fact, paid before the Credit on the Goods had expired; but I apprehend that the Statute would have operated, although at the Time of the Bankruptcy the Credit had expired, and the Bill had continued outstanding, and so the Law is considered in other Cases. In ex-parte Boyle, Cooke's B. L. 561, Lord Cork having drawn four several promissory Notes for the Accommodation of the Bankrupt, was ruled to be entitled to set off the Sums paid by him in Pursuance of such Notes after the Bankruptcy, against a Debt due from him at the Time of the Bankruptcy, and to prove the Amount paid before the Bankruptcy, under the Commission. In Oughterlony v. Easterby, 4 Taunt. 888, upon an Attempt to set off Acceptances of the Bankrupt, Gibbs, J. held that it must either be proved that the Obligation commenced before the Bankruptcy, to bring it within the general Law of Set-off, or that there was some Connection in the Origin of the Transaction, to bring it within the Cases of mutual Credit.

A Bill, to which the Bankrupt is a Party, indorsed to the Defendant after the Act of Bankruptcy, cannot be set-off, Marsh v. Chambers, 2 Str. 1234, and the Onus Probandi as to the Time of receiving it is incumbent on the Defendant, Dickson v. Evans, 6 T. R. 57. Where the Defendant proved that the Bankrupts discounted for him a Bill in Notes of their own three Weeks before the Bankruptcy, it was held sufficient to warrant the Jury in presuming that they were in his Possession at the Time of the Bankruptcy, Moore v. Wright, 2 Marsh, 209. In ex-parte Hale, 3 Ves. 304, it was held by Lord Loughborough, that an Indorser of a Bill, who took it up after the Bankruptcy of the Acceptor, was not entitled to set it off, (although it was admitted upon the Authority of former Decisions that he might prove.) The Case was disposed of with very slight Discussion, and I rather think without sufficient Consideration, for it seems reasonable that a Person who has received an Engagement of the Bankrupt before the Bankruptcy, shall, upon its being returned to him as inoperative, be remitted to his former Right whereupon he had given Credit to the Acceptance of the Bankrupt, and Query whether the Opinion in Oughterlony and Easterly above cited, that the Defendant must either shew that the Obligation commenced before the Bankruptcy, or that there was some Connection in the Origin of the Transaction, may not be fairly applicable to the Case of such Indorser, as, during the Time of the Indorser being the Holder of the Bill there was an actual Obligation on the Acceptor to pay him the Amount, and after his parting with it,

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swear or depose, or being of the People called Quakers, affirm, and before the Bankruptcy an Obligation to indemnify him from the liability.

In Hankey v. Smith, 3 T. R. 507 n. it was held, that if the Holder of a Bill buy Goods of the Person who afterwards becomes a Bankrupt, he might set-off the Amount of the Bill, although the Bankrupt at the Time of the Sale did not know that he had it in his Hands. The same Doctrine is in effect applied in all the Cases respecting mutual Credit by Holders of Bills. But where the Defendant contracted for the Purchase of Goods to be paid for in a Bill at two Months, and offered the Bankrupt's own Acceptances in Satisfaction of the Contract, (it having been first decided that the Offer of such Acceptance was not equivalent to a Performance of the Contract) it was ruled that he could not set off the Amount of the Acceptances, the Fact appearing to be a Contrivance between the Defendant and P. and F. the former Holders of this Bill, to obtain Goods for the Acceptances which had been before offered by the Holder to the Bankrupt and refused by him, when if P. and F. had applied for the Goods in their own Names they would not have been sold to them. Lord Ellenborough, "The Defendants took the Indorsement not for themselves but for P. and F. and merely for the Purpose of getting the Bankrupt's Goods without paying for them. Le Blanc, J. The Parties acted upon a firm Persuasion that the Bankrupt's Circumstances were bad, and that the Defendants were not the bona fide Holders of the Bill for themselves, but that it was put into their Hands by P. and F. not in the ordinary Course of Trade, but for the specific Purpose of being set off in Payment against these Goods." Bayley, J. "The Question is whether the Defendants were entitled to pay for the Goods with this Bill? and I think they were not, because I do not think that they were the real and bona fide Holders of it as Purchasers, but merely held it as Trustees for P. and F. and as such I do not think they could set it off against a Demand upon them in their own Right. It is true that a Banker who is the legal Holder of such Securities may prove the Debt under the Acceptor's Commission, but if he hold them as Trustee merely for another he could not prove the Debt, if the Cestui-que-trust was indebted to the Bankrupt's Estate. and here I do not think that the Defendants could have proved the Amount of the Bill under the Commission as a Debt due to them; for they could not have sworn that the Bankrupt was justly and truly indebted to them upon it". "Here there was a Sale of Goods by the Bankrupt to the Defendants, and the Assignees only seek to recover Payment for them, but it does not follow because there was a Sale that the Defendants can pay for the Goods by a Bill of the Bankrupt's, of which they were not the bona fide Holders in their own Right." Fair v. McIver, 16 East, 130.—Perhaps the above Case was rightly decided on Account of there being so much Trick and Contrivance in the Business, but there are many of the Observations in it which it would be difficult to admit as laying the Foundation of any general Rule. Whether the Payment with the Bankrupt's own Acceptance was or was not a fair Performance of the Contract, is a Question which does not depend upon any Construction of the Bankrupt Law, but it by no means follows, that because the Offer of the Bill would not have been a Performance of the Contract, the Possession of it as Holder would not have constituted a Case of mutual Credit. If the Payment with the Acceptance would have been sufficient, provided the Defendants held it entirely in their own Right, there could be no Objection merely on account of their holding it for the Benefit of another Person, if by the Assent of that Person they had such Controul over it as would have enabled them to make a valid Transfer. The Idea that the Person holding as Trustee could not prove, provided the Cestui-que-trust was indebted to

that any Sum of Money is due to him or her from any Bank-

the Estate, seems altogether unfounded. It would be much more beneficial to the Estate that the Bill should be proved and the Debtor remain subject to the Payment of his Debt, than that the Bill should be regarded in the Hands of the Debtor as the Subject of a Set-off; the great Struggle in all these Cases on the Part of the Assignees being to make the mutual Demand a Matter of Proof rather than a Matter of Set-off.

There are several Cases as to the Right of a Broker who has effected a Policy of Insurance under a del credere Commission, to set off the Money due for Losses against a Claim by the Underwriter or his Assignee for Premiums. The general Right of Set-off in such Case is established in Grove v. Dubois, 1 T. R. 112. Gibbs C. J. in the late Case of Baker v. Langhorn, 6 Taunt, 519, 2 Marshall, 215, seems to doubt the original Propriety of this Doctrine, observing "we have taken our Spring from the Case of Grove v. Dubois, and we refer all these Distinctions to that Case; we suppose that Case proceeded upon some Principle, I wish I could discover that Principle, I think the Mistake in Grove v. Dubois was to suppose that he who is only liable in the second Instance on the Failure of the original Debtor, could in any Case be considered as the original Debtor himself." In Baker v. Langhorne the Decision principally turned upon the Party having settled an Account and made an express Promise to pay. It was contended that a Broker has a Right to set-off were he effects the Policy in his own Name, though without a Commission del credere. Upon this Point the Court did not express any Opinion. See the following Cases respecting Set-off, in the Case of Brokers or Factors, the Points in which related to the particular Nature of the Transaction between the Parties, rather than to any Question of Construction of the Provision at present under Consideration, Cumming v. Forrester, 1 M. and S. 494, Koster v. Easen, 2 M. and S. 112, Goldsmidt v. Lyon, 4 Taunt. 434, Minett v. Forrester, n. ibid.

With regard to the Persons between whom mutual Credit is allowed, it is a settled Point in Bankruptcy, as well as in Cases arising on the Statutes of Set-off, that there must be a Mutuality of Parties, and, consequently, that a joint and separate Debt, cannot respectively be set-off against each other; see ex-parte Christie, 10 Ves. 105, in which a Captain endeavoured to set-off the separate Debts from several of his Owners, against their respective Shares of the Money due from him to them jointly. In ex-parte Quinten, 3 Ves. 248, Lord Loughborough held, that a Debtor to the Partnership, might set-off a separate Debt from one Partner against the Share of that Partner of the Surplus of the joint Estate; but the Principle of that Case was over-ruled in ex-parte Twogood, 11 Ves. 517, Lord Eldon observing, that he did not deny that there was a good Deal of natural Equity in the Proposition, but pursuing it through all its Consequences, it would so disturb all the habitual Arrangements in Bankruptcy, that he dared not do it. But in ex-parte Hanson, 12 Ves. 346, it was held, that a Debt from the Bankrupt to the Petitioner solely, might be set-off against a joint Bond from the Petitioner and another Person, as his Surety. See also the same Case in a subsequent Stage, 1 Rose, 156, in which Lord Eldon said, "The joint Debt is nothing more than a Security for the separate one, and in Equity the Creditor who has such a joint Security, cannot resort to it without allowing what he has received from the separate Debts." In ex-parte Stephens, 11 Ves. 24, a Person, who had placed a Sum of Money in the Hands of his Bankers, to be invested in Stock, and was assured by them (contrary to the Truth) that they had done so—having joined her Brother as Surety in a Note to the Bankers, Lord Eldon, on Account of the Fraud, held, that the Money

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rupt or Bankrupts, which Sum of Money is not really due or owing, or shall swear or affirm, that more is due than is really due or owing, knowing the same to be not due or owing, and that such Oath or Affirmation is false and untrue, and being thereof convicted by Indictment or Information, such Person shall suffer the Pains and Penalties inflicted by the several Statutes made and now in Force against wilful Perjury, and shall moreover be liable to pay double the Sum so sworn or affirmed to be due or owing as aforesaid, to be recovered and levied as other Penalties and Forfeitures are upon penal Statutes after Conviction to be levied and recovered; and such double Sum shall be equally divided among all the Creditors seeking Relief under the said Commission. (61)

Commissioners may appoint Assignees.

XXX. Provided always, and be it further enacted, that it shall and may be lawful for the said Commissioners authorized as aforesaid, or the major Part of them, as often as they shall see Cause, for the better preserving and securing the Bankrupt's Estate, immediately to appoint one (62) or more Assignee or

due to her, should be set off against the Debt for which she had become Surety, and that the Assignees should be restrained from suing either her or her Brother. But in a subsequent Case, his Lordship observed, that there were certainly Difficulties in the Decision of ex-parte Stephens, which perhaps the strong Circumstances of Fraud in that Case could alone have obviated, ex-parte Blagden, 2 Rose, 249. In the last mentioned Case, Lord Eldon held, that a Debt due to the Wife, dum sola, could not be set off against a Debt from the Husband, either as Matter of strict Set-off at Common Law, or as comprehended within the Description of mutual Debts and Credits, in the Statute 5 Geo. 2d; neither (he observed) he apprehended it was assisted by any equitable View of it: the Husband could not file a Bill without making the Wife a Party to the Suit, and thereby letting in her equitable Claim upon the Fund.

An Executor, although residuary Legatee, cannot set off a Debt due to the Testator, against one due from himself personally. Bishop v. Church, 3 Atk. 691. But in Jeffs v. Wood, 2 P. Wms. 128, an Executor was allowed, in Equity, to set off a Debt to himself against a Legacy; but the Case was decided upon general Principles, without reference to the particular Operation of the Bankrupt Law.

The Right of Set-off, generally speaking, depends upon the State of the Transaction between the Parties at the Time of the Act of Bankruptcy, but the Case of Persons entitled to mutual Credit in Respect of subsequent Transactions, is in certain Cases provided for by Stat. 46 Geo. 3, Ch. 135.

(61.) This Penalty may be recovered by Action, and it is sufficient to aver an Indictment, Conviction, and Judgment for the Offence, without directly alleging that the Defendant was guilty, Holmes v. Walsh, 7 T. R. 458.

(62.) The principal Object of making an Assignment under this Power is to prevent the Effect of an Extent, the Crown being only bound from the Time of actual Assignment and not by Relation to the Act of Bankruptcy. In Brassey v. Dawson, 2 Str. 978, it was held, that a Seizure under a Warrant, by Commissioners of the Land Tax, should be preferred to the Title of the Assignees under a subsequent Assignment. Provisional Assignees, are sometimes appointed for the Purpose of continuing the Trade of a Shop, &c. or disposing of pe-

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Assignees of the Estate and Effects or any Part thereof; which Assignee or Assignees, or any of them, shall or may be removed or displaced at the Meeting of the Creditors so to be appointed as aforesaid, for the Choice of Assignees, if they or the major Part in Value of them (whose Debts respectively amount to ten Pounds or upwards as aforesaid) then present, and of such Persons duly authorized as aforesaid, shall think fit; and such Assignee or Assignees as shall be so removed and displaced, shall deliver up and assign all the Estates and Effects of such Bankrupt which shall have come to his or their Hands or Possession, or which shall have been assigned by the said Commissioners as aforesaid, unto such other Assignee or Assignees who shall be so chosen by the Creditors as aforesaid; and all the Estate and Effects of the Bankrupt which shall be delivered up or assigned, shall be, to all Intents and Purposes, as effectually and legally vested in such new Assignee or Assignees, as if the first Assignment had been made to him or them by the said Commissioners: and if such first Assignee or Assignees shall refuse or neglect by the Space of ten Days next after Notice given of the said Choice of such new Assignee or Assignees, and of his and their Consent to accept such Assignment, signified to the first Assignee or Assignees by Writing under his or their Hand or Hands, to make such Assignment and Delivery as aforesaid, every such first Assignee or Assignees shall respectively forfeit the Sum of two hundred Pounds, to be divided and distributed amongst the Creditors, towards Satisfaction of their Debts, in such Manner as the Estate of the Bankrupt is or ought to be divided and distributed, and to be recovered by Action of Debt,

Penalty on first Assignees not delivering up the Effects to the new ones.

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rishable Property, or Property attended with Expence, such as Horses. In some Places they are usually made without any specific Object, and merely for the Sale of the Charge, but in ex-parte Cuthbert, 1 Maddock, 78, the V. C. refused to allow the Expences of a Provisional Assignment, unless there appeared to be some adequate Reason for making it. A provisional Bargain and Sale is necessary to prevent the Effect of an Extent, in Respect of real Estates.

The abuses arising from Extents in Aid, are now becoming very much the Subject of public Attention, and it may be hoped that the Time will ere long arrive, when a Person who happens to be indebted to the Crown, will not be able to claim so great an Advantage over other Creditors. And, considering the general Benefit of Society, I am very far from thinking it desirable, that even an immediate Extent should have Precedence unless issued previously to the Date of the Commission. And certainly in each individual Case the Loss will be beyond all Comparison, more light in falling on the general Purse of the Community, than in disappointing the reasonable Expectations of the particular Creditors, see Let Rom. Sec. 16. Upon some late Petitions in Parliament upon this Subject, it was observed, that the Application should be made to the Barons of the Exchequer; but, I conceive, there is no Doubt of the Proceedings of that Court being properly regulated according to the existing Law; and the Mischiefs complained of are such as it is not within the Reach of a merely judicial Authority to redress.

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Bill, Plaint or Information in any of his Majesty's Courts of Record at Westminster, by such Person or Persons as such the major Part of the Commissioners, authorized as aforesaid, shall appoint to sue for the same, with full Costs of Suit, wherein no Privilege, Protection or Wager in Law, or more than one Imparlance shall be allowed; any Law, Custom or Usage to the contrary notwithstanding.

'XXXI. And whereas it may be found necessary, that as well Assignments of Bankrupts' Estates already made by Commissioners, as Assignments hereafter to be made pursuant to the Choice of Creditors, should be vacated, and a new Assignment or Assignments be made of the Debts and Effects unreceived and not disposed by the then Assignees to other Persons to be chosen by the Creditors as aforesaid:' be it therefore enacted and declared by the Authority aforesaid, that it shall and may be lawful to and for the Lord Chancellor, Lord Keeper or Commissioners for the Custody of the Great Seal of Great Britain for the Time being, upon Petition of any Creditors, to make such Order therein as he or they shall think just and reasonable. (63) And in Case a new Assignment shall be ordered to be made as aforesaid, that then such Debts, Effects and Estate of such Bankrupt shall be thereby effectually and legally vested in such new Assignee or Assignees; and it shall and may be lawful for him and them to sue for the same in his or their Name or Names, and to discharge any Action or Suit, or to give any Acquittance for such Debts as effectually to all Intents and Purposes as the Assignee or Assignees in the former Assignment might have done in Case no new Assignment had been made, any Thing herein or in any former Act contained or made to the contrary in any wise notwithstanding; and that the said Commissioners shall cause public Notice to be given in the two London Gazettes that shall immediately follow the Removal of such Assignee or Assignees, and the Appointment of such other Assignee or Assignees as aforesaid, that such Assignee or Assignees is or are removed, and such other Assignee or Assignees appointed in his or their Stead, and that such Persons as are indebted to the said Bankrupt's Estate, do

Notice of Removal to be given in the Gazette.

(63.) See as to the general Authority given of the Great Seal over the Choice of Assignees, Note 58 ante. In ex-parte Reynolds, 5 Ves. 707, an Assignee was removed for purchasing the Bankrupt's Property: in ex-parte Grey, 13 Ves. 274, on Account of his residing out of the Court: in ex-parte Higgins, 1 Ball and Beatty, 218, where the Assignee had absconded. The Estates vested in a surviving Assignee, devolve upon his Heirs or Executors, according to the Nature of the Property, but the Great Seal may vacate a Bargain and Sale or Assignment, so as not to affect Purchasers, in which Case, the Commissioners may make a valid Conveyance on Assignment, as in the first Instance, ex-parte Bainbridge, 6 Ves. 451 ex-parte Leman, 13 Ves. 271. As to Actions brought by Assignees appointed in Lieu of others displaced, see De Cosson v. Vaughan, 10 E. 61.

not pay such Debt or Debts to such Assignee or Assignees as shall be removed as aforesaid.

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XXXII. And whereas by Reason of the Monies which are lodged in the Hands of the Assignees until a Dividend is made, Assignees do oftentimes delay the dividing thereof, to the very great Prejudice of the Bankrupt's Creditors: for preventing whereof, and to the End Assignees may make speedy Dividends of the Estate and Effects of such Bankrupts, be it enacted by the Authority aforesaid, that before the Creditors shall proceed to the Choice of an Assignee or Assignees of any Bankrupt's Estate, the major Part in Value of the said Bankrupt's Creditors then present shall, if they think fit, direct in what Manner, how and with whom and where the Monies arising by, and to be received from Time to Time out of the Bankrupt's Estate, shall be paid in and remain until the same shall be divided amongst all the Creditors as by this Act is directed; to which Rule and Direction every such Assignee and Assignees, afterwards to be chosen, shall conform, as often as one hundred Pounds shall be got in and received from such Bankrupt's Estate, and shall be and are hereby indemnified for what they shall do in Pursuance of such Direction of the said Creditors as aforesaid.

Creditors, before choosing Assignees, to fix the Method of Dividends.

XXXIII. And be it further enacted by the Authority aforesaid, That every Person or Persons chosen or who shall be chosen Assignee or Assignees of the Estate and Effects of such Bankrupt, shall, at some Time after the Expiration of four Months, and within twelve Months from the Time of issuing of such Commission, cause at least twenty-one Days' public Notice to be given in the London Gazette, of the Time and Place the Commissioners and Assignees intend to meet, to make a Dividend or Distribution of such Bankrupt's Estate and Effects; at which Time the Creditors, who have not before proved their Debts, shall then be at Liberty to prove the same; which Meeting for the City of London and all Places within the Bills of Mortality, shall be at the Guildhall of the said City, and upon every such Meeting the Assignee or Assignees shall produce, to the said Commissioners and Creditors then present, fair and just Accounts of all his and their Receipts and Payments touching the said Bankrupt's Estate and Effects, and of what shall remain outstanding, and the Particulars thereof; and shall, if the Creditors then present, or the major Part of them, require the same, be examined upon Oath, or, being of the People called Quakers, upon solemn Affirmation before the said Commissioners, or the major Part of them, touching the Truth of such Accounts; and in such Accounts the said Assignee or Assignees shall be allowed and retain all such Sum and Sums of Money as they shall have paid and expended in suing out and prosecuting of such Commission, and all other just Allowances,

Method of making Dividends.

NO 17. 5 Geo. II. Cap. 30. A. D. 1732.

on Account of and by Reason or Means of their being Assignee or Assignees; and the said Commissioners, or the major Part of them, shall order such Part of the neat Produce of the said Bankrupt's Estate, as by such Accounts or otherwise shall appear to be in the Hands of the said Assignees, as they, or the major Part of them, shall think fit, to be forthwith divided amongst such of the Bankrupt's Creditors, who have duly proved their Debts under such Commission, in Proportion to their several and respective Debts; and the Commissioners, or a major Part of them, shall make such their Order for a Dividend in Writing under their Hands, and shall cause one Part of such Order to be filed amongst the Proceedings under the said Commission, and shall deliver unto each of the Assignee or Assignees under such Commission, a Duplicate of such their Order likewise under the Hands of the said Commissioners: which Order of Distribution shall contain an Account of the Time and Place of making such Order, and the Sum Total or Quantum of all the Debts proved under the said Commission, and the Sum Total of the Money remaining in the Hands of the Assignee or Assignees to be divided, and how much in particular in the Pound is then ordered to be paid to every Creditor under the said Commission; and the said Assignee or Assignees, in Pursuance of such Order, and without any Deed or Deeds of Distribution to be made for that Purpose, shall forthwith make such Dividend and Distribution accordingly, and shall take Receipts, in a Book to be kept for that Purpose, from each Creditor, for the Part or Share of such Dividend or Distribution which he or they shall make and pay to each Creditor respectively; and such Order and Receipt shall be a full and effectual Discharge to such Assignee, for so much as he shall fairly pay, pursuant to such Order as aforesaid.

§ XXXIV. And whereas Assignees are, and may sometimes be prevented from making such speedy Dividends of the Estate and Effects of Bankrupts, as by this Act is intended, by Reason of Debts due, or pretended and claimed to be due from such Bankrupts, upon long and intricate Accounts or Demands, which are disputed or not admitted by the Commissioners and Creditors to be just and fair Debts, and such Claimants are thereby obliged to ascertain such their Demands by Actions or Suits in Law or Equity, which are oftentimes many Years depending, and many other Differences and Difficulties do arise under Commissions of Bankrupts, which might be determined by Arbitration, if Assignees had Power to submit the same; be it therefore enacted by the Authority aforesaid, that it shall and may be lawful to and for the Assignee or Assignees of any Bankrupt's Estate and Effects, by and with the Consent of the major Part in Value of the Bankrupt's Creditors, who shall have duly proved their Debts under such Commission, and who

shall be present at any Meeting of the said Creditors, pursuant to Notice to be for that Purpose given in the London Gazette, to submit any (64) Difference or Dispute between such Assignee or Assignees, and any Person or Persons whatsoever, for or on Account, or by Reason or Means of any Matter, Cause or Thing whatsoever, relating to such Bankrupt or Bankrupts, his, her, or their Estate or Effects, to the final End and Determination of Arbitrators to be chosen by the said Assignee or Assignees, and the major Part in Value of such Creditors, and the Party or Parties with whom they shall have such Difference, and to perform the Award of such Arbitrators, or otherwise to compound and agree the Matters in Difference and Dispute between them, in such Manner as the said Assignee or Assignees, with such Consent as aforesaid, shall think fit, and can agree, and the same shall be binding to all the Creditors of the said Bankrupt or Bankrupts; and the Assignees are hereby indemnified for what they shall fairly do according to the Directions aforesaid.

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Assignees, with Consent of Creditors, may submit Disputes to Arbitration.

XXXV. And be it further also enacted by the Authority aforesaid, that any Assignee or Assignees made or chosen as aforesaid, shall be, and is and are hereby impowered, by and with the Consent of the major Part of such Bankrupt's Creditors in Value, who shall be present at a Meeting to be had for that Purpose, of which public Notice shall be given in the London Gazette, to make Composition with any Person or Persons, Debtors or Accountants to such Bankrupts, where the same shall appear necessary and reasonable, and to take such reasonable Part as can upon such Composition be gotten, in full Discharge of such Debts and Accounts; any Law, Custom or Usage to the contrary notwithstanding.

Assignees, with Consent of Creditors, may compound Debts.

XXXVI. Provided always, and be it enacted by the Authority aforesaid, that after such Bankrupt or Bankrupts shall have obtained his, her or their Certificate, and the same shall be duly confirmed as herein is mentioned, every such Bankrupt or Bankrupts shall, and is, and are hereby obliged to give his, her or their Attendance, upon every reasonable Notice in Writing to be given to him, her or them, or to be left at his, her or their usual Place of Abode, by the Assignee or Assignees or their Order, thereby requiring him, her or them, to attend the Assignee or Assignees of such Bankrupt's Estate, in Order to make up, adjust or settle any Account or Accounts between such Bankrupt or Bankrupts, and any Debtor to or Creditor of such Bankrupt's Estate, or to attend any Court or Courts of Record, in order to be examined touching the same, or for such other Business, which such Assignee or Assignees shall judge

Bankrupts, after Allowance of Certificates, to attend Assignees in settling Accounts.

(64.) There must be an express Notice for each particular Case. A general Authority is not sufficient, ex-parte Whitchurch, 1 Atk. 91.

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Allowance for Attendance.

necessary for getting in the said Bankrupt's Estate and Effects, for the Benefit of his, her or their Creditors; for which said Attendance the Bankrupt shall be allowed and paid the Sum of two Shillings and Sixpence per Diem by such Assignee or Assignees out of the Bankrupt's Estate: and in Case such Bankrupt or Bankrupts shall neglect or refuse to attend, or on such Attendance, shall refuse to assist in such Discovery, without good and sufficient Cause to be shewn to the Commissioners or the major Part of them, for such his, her or their Neglect or Refusal, to be by them allowed as sufficient, such Assignee or Assignees making due Proof thereof upon Oath, or being of the People called Quakers, upon solemn Affirmation before the said Commissioners authorized as aforesaid, or the major Part of them, the said Commissioners, or the major Part of them, are hereby impowered and required to issue a Warrant or Warrants, directed to such Person or Persons as they shall think proper, for apprehending such Bankrupt or Bankrupts, and him, her or them to commit to the County Gaol, there to remain in close Custody without Bail or Mainprize, until he, she or they shall duly conform to the Satisfaction of the said Commissioners authorized as aforesaid, and be by the said Commissioners or the Special Order of the Lord Chancellor, Lord Keeper or Commissioners for the Custody of the Great Seal of Great Britain for the Time being, or otherwise by due Course of Law discharged; and such Gaoler or Keeper of such Prison to which such Bankrupt or Bankrupts shall be committed, is hereby required to keep such Person or Persons in close Custody within the Walls of the said Prison, until he, she or they be duly discharged as aforesaid, under the Pains and Penalties before mentioned, for such Gaoler and Keeper suffering such Prisoners, committed pursuant to this Act, to escape and go at large.

Imprisonment on Non-attendance.

Final Dividend within eight. Months.

XXXVII. And be it further enacted by the Authority aforesaid, That within eighteen Months next after the issuing of any such Commission as aforesaid, the Assignee or Assignees shall make a second Dividend of the Bankrupt's Estate and Effects, in Case the same was not wholly divided upon the first Dividend, and shall cause a Notice to be inserted in the London Gazette, of the Time and Place the said Commissioners intend to meet to make a second Dividend and Distribution of such Bankrupt's Estate and Effects, and for the Creditors, who shall not before have proved their Debts, to come and prove the same; and at such Meeting every such Assignee or Assignees shall produce upon Oath or Affirmation as aforesaid, his, her or their Account or Accounts of the Bankrupt's Estate and Effects, and what upon the Balance thereof shall appear to be in his, her or their Hands, shall, by the like Order of the Commissioners, or the major Part of them, be forthwith divided amongst such of the Bankrupt's Creditors who shall have made due

Proof of their Debts, in Proportion to their several and respective Debts; which second Dividend shall be final, unless any Suit at Law or in Equity shall be depending, or any Part of the Estate standing out, that cannot have been disposed of, or that the major Part of the Creditors shall not have agreed to be sold and disposed of in Manner aforesaid, or unless some other or future Estate or Effects of the said Bankrupt shall afterwards come to or vest in the said Assignee or Assignees; (65) in which Case the said Assignee or Assignees shall, as soon as may be, convert such future or other Estate and Effects into Money in Manner aforesaid, and shall, within two Months next after the same shall be converted into Money as aforesaid, by the like Order of the Commissioners, or the major Part of them, divide the same among such Bankrupt's Creditors who shall have made due Proof of their Debts under such Commission.

Exception.

XXXVIII. Provided always, That no Suit in Equity shall be commenced by any Assignee or Assignees, without the Consent of the major Part in Value of the Creditors of such Bankrupt, who shall be present at a Meeting of the Creditors, pursuant to Notice to be given in the London Gazette for that Purpose. (66.)

No Suit in Equity to be commenced without Consent of Creditors.

'XXXIX. And whereas Persons dealing as Bankers, Brokers and Factors, are frequently entrusted with great Sums of Money, and with Goods and Effects of very great Value belonging to other Persons:' it is hereby further enacted, that such Bankers, Brokers (67) and Factors, shall be and are hereby declared to be subject and liable to this and other the Statutes made concerning Bankrupts.

Bankers, Brokers and Factors liable to Statutes.

XL. Provided always, and it is hereby further declared and enacted by the Authority aforesaid, that no Farmer, Grazier, or Drover of Cattle, (68) or any Person or Persons, who is or are, or shall be Receiver General of the Taxes granted by Act of Parliament, shall be intituled as such to any of the Benefits given by this Act, or be deemed a Bankrupt within the same, or within any of the Statutes now in Force concerning Bankrupts; any Law, Custom or Usage to the contrary notwithstanding.

Persons not liable.

'XLI. And whereas Commissioners of Bankrupts, and the Depositions taken before the Commissioners of Bankrupts, and the Proceedings upon such Commissions, are most commonly

(65.) The Great Seal has a Discretion to postpone the Dividend, ex-parte Kendal, 1 Rose, 71.

(66.) This does not extend to a Suit in which the Creditors have not any Interest, Wilkins v. Fry, 1 Merivale, 244, 2 Rose, 271.

(67.) A Pawn-broker ruled to be within the Act, Highmore v. Molloy, 1 Atk. 206, see as to Scriveners, St. 21, J. 1, c. 19, (ante No. 4), Sec. 2 and Note.

(68.) A Person buying Horned Cattle, agisting them on the Land of other Persons, and selling them, is a Drover within this Exception, Mills v. Hughes, Willes, 588, Bolton v. Sowerby, 11 East, 274.

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kept by such Persons as act as Clerks or Secretaries to such Commissioners, and by Reason of the Death of such Clerks or Secretaries are many Times lost and mislaid, by Means whereof such Persons as have or may purchase any Messuages, Lands, Tenements or Hereditaments, under any Commission grounded upon the Statutes made concerning Bankrupts, may be disabled to make out their Right and Title to the same: and there being no certain Place where the Creditors of any Bankrupt, or any Person or Persons claiming any Estate or Interest in any Messuages, Lands, Tenements or Hereditaments, by or under any such Commission as aforesaid, can have Recourse to such Commission and the Proceedings thereupon; and such Commissions, Depositions and Proceedings, in Case they can be produced, are not at present of Record, nor can be given in Evidence, which may be of very evil Consequence to such Purchasers or Persons claiming as aforesaid:' be it therefore enacted by the Authority aforesaid, that upon the Petition of any Person or Persons to the Lord Chancellor, Lord Keeper or Commissioners for the Custody of the Great Seal of Great Britain, praying that such Commissions and the Depositions taken thereon, or any Part of such Depositions, and such Certificates so to be allowed and confirmed as aforesaid, or any Certificates heretofore allowed and confirmed, or any other Matter or Things relating to the said Commissions or the Proceedings thereupon, may be entred of Record, the Lord High Chancellor, Lord Keeper or Commissioners of the Great Seal, shall and may direct and order such Commissions, Depositions, Proceedings and Certificates or other Matters or Things, to be entred of Record; and in Case of the Death of the Witnesses proving such Bankruptcy, or in Case the said Commissions, Depositions, Proceedings or other Matters or Things, shall be lost or mislaid, a true Copy of the Record of such Commissions, Depositions and Proceedings, or other Matters or Things, signed and attested as hereinafter is mentioned, shall and may upon all Occasions, be given in Evidence to prove such Commissions, and the Bankruptcy of such Person, against whom such Commission hath been or shall be awarded, or other Matters or Things, (69) any Law, Usage or Custom to the contrary notwithstanding: and all Certificates which have been allowed and confirmed, or to be allowed and confirmed, and entered of Record as aforesaid, or a true Copy of every Certificate signed and attested as hereinafter is mentioned, shall and may be given in Evidence in any of his Majesty's Courts of Record, and be without any further Proof deemed, adjudged and taken, to be a full and effectual Bar and Discharge of and against any Action or Suit which shall be

Proceedings to be entred on Record,

by Direction of the Lord Chancellor.

(69.) The Depositions inrolled (the Witness being dead, &c.) are Evidence of the Time of committing the Act of Bankruptcy, Janson v. Willson, Doug. 257.

commenced or brought by any Creditor or Creditors of such Bankrupt, for any Debt or Demand contracted, due or demandable before the issuing of such Commission, unless any Creditor or Creditors of the Person that hath such Certificate, shall prove that such Certificate was fraudulently obtained; in which Case Costs shall be allowed to either Party, as in other common Cases; and to the End any Creditor or other Person or Persons may know where to search and see whether such Commission hath issued, and find what Depositions have been taken by Virtue thereof, and what Proceedings have been thereupon, and whether the said Bankrupt hath made such Affidavit or Affirmation as aforesaid, and whether such Certificates are entred of Record as aforesaid, and all other Matters or Things which shall be entred of Record in pursuance of this Act, the Lord High Chancellor, Lord Keeper or Commissioners for the Custody of the Great Seal shall appoint a certain proper Place near the Inns of Court, where all and every the Matters aforesaid shall be entered of Record, where all Persons shall be at Liberty to search and see if the same are duly entred of Record; and the Lord Chancellor, Lord Keeper or Commissioners shall, by a Writing under his or their Hands, appoint a proper Person, who shall, by himself, or his sufficient Deputy, to be approved by the Lord High Chancellor, Lord Keeper or Commissioners, by a Writing under his or their Hands, enter of Record such Commissions, Depositions, Proceedings and Certificates, and other Matters and Things, and have the Custody of the Entries thereof; and also appoint such Fee and Reward to be paid to such Person for his Labour and Pains therein, as the Lord High Chancellor, Lord Keeper or Commissioners shall think reasonable, not exceeding what is usually paid in the like Cases; and that the Person so to be appointed, and his Deputy, shall continue to enter of Record all and every the Matters and Things aforesaid, and to have the Custody of the same, so long as he or they shall respectively behave themselves well in entering the same of Record, and keeping such Entries, and shall not be removed, but by Order in Writing under the Hand of the Lord High Chancellor, Lord Keeper or Commissioners, on a good and sufficient Cause therein specified; and in Case such Person shall die, or be as aforesaid removed, the Lord High Chancellor, Lord Keeper or Commissioners for the Time being shall and may, in Writing under his or their Hands, appoint another Person to enter the same of Record, who shall have the Custody of the Entries thereof, and shall have and receive the like Fee and Reward for his Labour and Pains therein.

Liberty to search.

'XLII. And whereas the suing out and prosecuting of Commissions of Bankrupts is at present very expensive, to the great Prejudice of the Bankrupt and his Creditors;' be it fur-

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Clause to prevent unnecessary Expences.

ther enacted by the Authority aforesaid, that there shall not be paid or allowed by the Creditors or out of the Estate of the Bankrupt, any Monies whatsoever for Expences in Eating or Drinking of the Commissioners, or of any other Persons at the Times of the Meeting of the said Commissioners, or any of the Creditors: and that no Schedule shall be annexed to any Deed of Assignment of the personal Estate of such Bankrupt from the Commissioners to the Assignee or Assignees of the said Estate: and if any Commissioner or Commissioners in any Commission shall order any such Expence to be made, or eat or drink at any such Meeting at the Charge of the Creditors, or out of the Estate of such Bankrupt, or receive or take above the Sum of twenty Shillings (70) each Commissioner for each respective Meeting, every such Commissioner so offending shall be disabled for ever to act as a Commissioner in such or in any other Commission founded on this Act, or any of the Statutes made concerning Bankrupts.

XLIII. Provided always, and be it further enacted by the Authority aforesaid, that the said Commissioners authorized as aforesaid, and every of them, shall not be capable of acting as a Commissioner or Commissioners in the Execution of any of the Powers and Authorities given and granted by this present Act, or any other Act or Acts of Parliament now in Force concerning Bankrupts, after the 24th day of June, one thousand seven hundred and thirty-two (unless it be the Power hereby given of administering Oaths to Commissioners) until such Time as he and they respectively shall have taken an Oath to the Effect following: that is to say,

Commissioners' Oath,

I A. B. do swear, that I will faithfully, impartially and honestly, according to the best of my Skill and Knowledge, execute the several Powers and Trusts reposed in me as a Commissioner in a Commission of Bankrupt against and that without Favour or Affection, Prejudice or Malice.

So help me God.

a Memorial thereof to be entred.

XLIV. Which Oath any two or more of the said Commissioners are hereby impowered and required to administer to each other in the same Commission named and authorized; and that the said Commissioners shall and are hereby required to enter and keep a Memorial or Memorials thereof, signed by them respectively, among the Depositions and other Proceedings, on each respective Commission that shall be issued forth by Virtue of this Act, or any other Act or Acts of Parliament now in Force concerning Bankrupts.

Commissions not to abate by the Death of his Majesty, &c.

XLV. And be it further enacted by the Authority aforesaid, that no Commission of Bankrupt shall abate by Reason of the Death of his present Majesty (whom God long preserve) his

(70.) See Let. Rom. Sec. 23.

Heirs or Successors, but such Commission shall continue in full Force; and if it shall be necessary to renew any such Commission by Reason of the Death of the Commissioners named in such Commission, so that a sufficient Number of Commissioners shall not be living, who can act therein, or for any other Cause, in every such Case such Commission shall be renewed, and but Half of the Fees usually paid upon granting or obtaining of Commissions of Bankrupt shall be paid for any such renewed Commissions.

NO. 11. 5 Geo. II Cap. 30. A. D. 1732.

XLVI. And to the End that Commissions of Bankrupt may be carried on and prosecuted with as little Expence as reasonably may be, be it enacted by the Authority aforesaid, that all Bills of Fees or Disbursements claimed or demanded by any Solicitor, Clerk or Attorney employed under any Commission of Bankrupt, shall be settled, adjusted and certified by one of the Masters of the Court of Chancery; and so much as the Master shall certify to be due to such Clerk, Solicitor or Attorney, and no more, shall be paid by the Assignee under such Commission; and the Master who shall settle and adjust such Bill, shall have and receive for his Care in settling and adjusting the same, as also for his Certificate thereof, the Sum of twenty Shillings, and no more. (71)

Bills of Fees, &c. to be settled by a Master in Chancery.

XLVII. And whereas several Bankrupts have, either through Inadvertency or the Intricacy and Multiplicity of their Affairs, failed to obtain, within the Time limited, Certificates allowed as directed ' by a Clause in an Act passed in the Third Year of the Reign of his present Majesty (amongst other Things) for Relief of Bankrupts, whose Certificates were not allowed before the Expiration of a late Act for the better preventing Frauds committed by Bankrupts, now expired, notwithstanding they have discovered all their Estate and Effects, and delivered the same up for the Benefit of their Creditors, and been conformable unto the said Act in other Particulars;' be it therefore further enacted by the Authority aforesaid, that all and every Bankrupt and Bankrupts, who was or were declared a Bankrupt or Bankrupts, on or before the fourteenth day of May, one thousand seven hundred and twenty-nine, and have discovered all their Estate and Effects, and have delivered up the same for the Benefit of their Creditors, shall be intitled to all and singular the Relief, Benefit and Advantages, and be subject and liable to all the Penalties mentioned or contained in the Act of Parliament passed in the fifth year of the Reign of his late Majesty King George the First, entituled, *An Act for the better preventing Frauds committed by Bankrupts*, if they already have obtained, or shall hereafter, at any Time before the

Certificates of Bankrupts before 14 May, 1729, on Conformity confirmed.

(71.) Mr. Christian says, that the Solicitors always complain, that upon a Bill taxed, however trifling the Sum, instead of twenty Shillings, they are obliged to pay many Pounds.

NO. 11. 5 Geo. II. Cap. 30 A. D. 1732.

twenty-fifth day of March, one thousand seven hundred and thirty-three, obtain Certificates of their Conformity pursuant to the said Act; and such Certificate shall be allowed and confirmed as the said Act directs; any Thing herein contained to the contrary notwithstanding.

and Proceedings against them discharged.

'XLVIII. And whereas Actions may have been brought against such Bankrupts, and other Proceedings had thereupon, for Causes and Matters arising and growing due before the Time of the Bankruptcy of such Bankrupts,' be it further enacted by the Authority aforesaid, that all such Actions, and all Proceedings thereon for any such Causes or Matters, shall be and are hereby discharged against such Bankrupts and their Bail so obtaining such Certificates allowed as aforesaid.

Duration of the Act.

XLIX. And be it further enacted by the Authority aforesaid, that this Act shall continue and be in Force for the Space of three Years, from the twenty-fourth Day of June, one thousand seven hundred and thirty-two, and from thence to the End of the then next Session of Parliament, and no longer. (72)

No. 12.

19 Georgii II. Cap. XXXII. A. D. 1746.—An Act for amending the Laws relating to Bankrupts.

NO. 12. 19 Geo. II. Cap. 32.—A. D. 1746.

'WHEREAS many Persons within the Description of, and liable to the Statutes concerning Bankrupts, frequently commit secret Acts of Bankruptcy unknown to their Creditors and other Persons, with whom, in the Course of Trade, they have Dealings and Transactions; and after the committing thereof, continue to appear publicly, and carry on their Trade and Dealings, by buying and selling of Goods and Merchandizes, drawing, accepting, and negociating Bills of Exchange, and paying and receiving Money on Account thereof, in the usual Way of Trade, and in the same open and public Manner as if they were solvent Persons, and had not become Bankrupts: and whereas the permitting such secret Acts of Bankruptcy to avoid and defeat Payments, really and bona fide made in the Cases, and under the Circumstances above-mentioned, where the Persons receiving the same had not Notice of, or were privy to such Persons having committed any Act of Bankruptcy, will be a great Discouragement to Trade and Commerce, and a Prejudice to Credit in general:' be it therefore enacted by the King's most Excellent Majesty, by

(72) This Act, after being several Times continued, is made perpetual by 37 Geo. 3, c. 124.

*** It was accidentally omitted to notice, in Note (46), that a Bill or Note indorsed to the Petitioning Creditor of the Act of Bankruptcy is sufficient to support the Commission, Glaiston v Hewer, 7 T. R. 198.

NO. 12.
19 Geo. II. Cap. 32.
A. D. 1746.

and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, that from and after the twenty-ninth day of October, in the Year of our Lord one thousand seven hundred and forty-six, no Person who is or shall be really and bona-fide a Creditor of any Bankrupt, for or in Respect of Goods really and bona-fide sold to such Bankrupt, or for or in Respect of any Bill or Bills of Exchange really and bona-fide drawn, nogociated or accepted by such Bankrupt, in the usual or ordinary Course of Trade and Dealing, (1) shall be liable to refund or repay to the Assignee or Assignees of such Bankrupt's Estate, any Money which, before the suing forth of such Commission, was really and bona-fide, and in the usual and ordinary Course of Trade and Dealing, received by such Person of any such Bankrupt, before such Time as the

Creditors of ... not ... refund to the Money received before Notice of Insolvency, &c.

(1.) 1. This Act extends only to the two Cases particularly mentioned; not to Payment for the Carriage of Goods, Bradley v. Clark, 5 T. R. 197, to the Payment of a Bill given in Satisfaction of a Verdict for Freight, Pemberton v. Marshall, 2 H. B. 371; to Re-payment of Money advanced by Bankers, in taking up an Acceptance, Holroyd v. Whitehead, 1 Marshall, 128.

2. Whether a Promissory Note is within the Statute, Query, Harwood v. Lomax, 11 E. 127, Vi. Observations, 1 Christian, 364.

3. It would seem from the above Cases of Pemberton v. Marshall, and Harwood v. Lomax, that a Payment to the Holder of a Bill of Exchange, to whom it is given for a different Consideration from that of Goods sold, is not within the Statute, but the Case may be different as to Persons receiving such Bill in the Course of Circulation, See 1 Christian, 368.

4. The Statute refers 1st, in this Place, to Bills drawn, &c. in the ordinary Course of Dealing, 2dly, to Payments made in the ordinary Course of Dealing, infra. A Note, for the Balance of an Account stated, Part of which was for Money lent, was held not to be given in the ordinary Course of Dealing, Harwood v. Lomax, ub supra.

5. A Payment by an Acceptor of a Bill, who had been indulged with Time after it became due, is not a Payment in the ordinary Course of Dealing, protected by this Statute, Vernon v. Hall, 2 T. R. 648, nor a Remittance to take up Bills running, drawn for the Accommodation of the Bankrupt, Tamplin v. Higgins, 2 Campb. 312; at Nisi Prius, confirmed by the Court, Payments in other Respects within the Statute are protected, although made in Consequence of an Arrest. Per Eyre C. B. Holmes v. Wennington, cited 2 B. and P. 399., So by Rooke and Heath, dissentiente Chambre, Cox v. Morgan, 2 B. and P. 398. Dubitatur by Lord Ellenborough, who said, that at first Sight he should be more inclined to the Construction of Chambre. Hovill v. Browning, 7 E. 154. And where a Person, being arrested and in Gaol, sent for all his Creditors but one and paid their Debts, the Case was ruled to be within the Act, Southey v. Butter, 3 B. and B. 237. A Payment obtained by Foreign Attachment is not protected, Id. ibid. A Payment by indorsing or transferring a Bill is the same Thing as a Payment in Money, Hawkins v. Penfold, 2 Vesey, 550, Wilkins v. Casey, 7 T. R. 711. In Hawkins v. Penfold, Lord Hardwicke considers all Payments without Notice of the Bankruptcy, protected by the Statute, without adverting to its being confined to particular Subjects, but this Opinion certainly cannot now be sustained.

NO. 12. 19 Geo. II. Cap. 32 A. D. 1746.

Person receiving the same shall know, understand, or have Notice that he is become a Bankrupt, or that he is in insolvent Circumstances.

'II. And whereas Merchants and other Traders frequently lend Money on Bottom-ree, or at Respondentia, and in the Course of their Trade frequently cause their Ships or Vessels, and the Goods or Merchandizes loaded thereon, to be insured; and where Commissions of Bankruptcy have issued against the Obligor in such Bottom-ree or Respondentia Bond, or the Under-writer or Assurer in such Assurance, before the Loss of the Ships or Goods, in such Bond or Policy of Insurance mentioned, hath happened, it hath been made a Question, whether the Obligee or Obligees in such Bond, or the Assured in such Policy of Insurance, should be let in to prove their Debts, or be admitted to have any Benefit or Dividend under such Commission, which may be a Discouragement to Trade:' for Remedy whereof be it enacted by the Authority aforesaid, that from and after the said twenty-ninth Day of October, the Obligee in any Bottom-ree or Respondentia Bond, and the Assured in any Policy of Insurance, (2) made and entered into upon a good and valuable Consideration, bona-fide, shall be admitted to claim; and after the Loss or Contingency shall have happened, to prove his, her, or their Debt and Demands in Respect of such Bond or Policy of Insurance, in like Manner as if the Loss or Contingency had happened before the Time of the issuing of the Commission of Bankruptcy against such Obligor or Insurer; and shall be intitled unto, and shall have and receive a proportionable Part, Share, and Dividend of such Bankrupt's Estate, in Proportion to the other Creditors of such Bankrupt, in like Manner as if such Loss or Contingency had happened before such Commission issued; and all and every Person or Persons against whom, from and after the said twenty-ninth Day of October, any Commission of Bankruptcy shall be awarded, shall be discharged of and from the Debt or Debts owing by him, her, or them, on every such Bond and Policy of Insurance as aforesaid, and shall have the Benefit of the several Statutes now in Force against Bankrupts, in like Manner, to all Intents and Purposes, as if such Loss or Contingency had happened, and the Money due in Respect thereof had become payable, before the Time of issuing of such Commissio

Obligees in Bottom-ree, &c. admitted to Claim.

Dividends.

Bankrupts discharged from Debts on Policy of Insurance, &c.

(2.) The Act extends to Life and other Insurances, although Insurance of Ships only is mentioned in the Preamble, Cox v. Listard, Doug. 166.

24 Geo. II. Cap. LVII.

[For the Construction of that Part of Section 1 of the preceding Number which relates to the Debtor being in insolvent Circumstances, see Bayley v. Schofield, 1 M. and S. 338. (Omitted to be noticed at its proper Place), and post, Number 16, Note 1].

NO. 13.
4 Geo. II. Cap. 57
A. D. 1751.

No. 13.

24 Georgii II. Cap. LVII. A. D. 1751.—An Act to continue several Laws therein mentioned * * * * * * * * * and to make some further Provisions in Relation to the signing of Certificates for the Discharge of Bankrupts.

'IX. AND whereas many Abuses have been committed by Bankrupts and Persons who, with their Privity, have attempted to prove fictitious and pretended Debts under Commissions of Bankruptcy, in Order that such Persons might be enabled to sign their Consent to the Certificates for discharging such Bankrupts from their Debts:' for Remedy whereof, and in order to prevent the like fraudulent and wicked Practices for the future, be it enacted by the Authority aforesaid, that where any Person shall fraudulently swear or depose, or being of the People called Quakers affirm, before the major Part of the Commissioners named in any Commission of Bankruptcy, or by Affidavit or Affirmation exhibited to them, that a Sum of Money is due to him or her from any Bankrupt or Bankrupts, which shall in Fact not be really and truly so due or owing; and shall, in Respect of such fictitious and pretended Debt, sign his or her Consent to the Certificate for such Bankrupt's Discharge from his Debts; that in every such Case, unless such Bankrupt shall, before such Time as the major Part of the said Commissioners shall have signed such Certificate, by Writing by him to be signed and delivered to one or more of the said Commissioners, or to one or more of the Assignees of his Estate and Effects under such Commissioners, disclose the said Fraud and object to the Reality of such Debt, such Certificate shall be null and void to all Intents and Purposes, and such Bankrupt shall not in that Case be intitled to be discharged from his Debts, or to have or receive any of the Benefits or Allowances given or allowed to Bankrupts by the said Act of the fifth Year of his present Majesty's Reign; any Thing therein contained to the contrary thereof in any wise notwithstanding. (1)

Persons swearing to a fictitious Debt from a Bankrupt,

and signing the Certificate; unless the Bankrupt shall disclose the Fraud,

the Certificate be null, &c.

X. And it is hereby enacted, that where any Creditor or Creditors of any Bankrupt reside in foreign Parts, the Letter of of Attorney of such Creditors, attested by a Notary Public in the usual Form, shall be a sufficient Evidence of the Power and Authority by which any Person thereby authorized shall sign any Bankrupt's Certificate; any Thing in the said Act of the fifth Year of his present Majesty's Reign to the contrary thereof in any wise notwithstanding.

Letter of Attorney from Creditor in foreign Parts to authorize signing Certificate.

(1.) In Edmonstone v. Webb, 3 Esp. 264, Lord Kenyon thought it necessary that the Plaintiff, in order to support this Objection, should call one of the Witnesses, who had made such false Depositions.

NO. 14. 4 Geo. III. Cap. A. D. 1764.

No. 14.

4 Georgii III. Cap. XXXIII. A. D. 1764.—An Act for preventing Inconveniences arising in Cases of Merchants, and such other Persons as are within the Description of the Statutes relating to Bankrupts, being intitled to Privilege of Parliament, and becoming insolvent.

Preamble.

WHEREAS Merchants, Bankers, Brokers, Factors, Scriveners and Traders, within the Description of the Statutes relating to Bankrupts, having Privilege of Parliament, are not compellable to pay their just Debts, or to become Bankrupts, by Reason of the Freedom of their Persons from Arrests upon civil Process: and some Doubts having also arisen, whether, in Cases of Bankruptcy, a Commission can be sued out during the Continuance of such Privilege: to remedy which Inconveniences, and to support the Honour and Dignity of Parliament, and good Faith and Credit in Commercial Dealings, which require that in such Cases the Laws should have their due Course, and that no such Merchants, Bankers, Brokers, Factors, Scriveners or Traders, in Case of actual Insolvency, should, by any Privilege whatsoever, be exempted from doing equal Justice to all their Creditors; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and it is hereby enacted by the Authority of the same, that from and after the eleventh Day of May, one thousand seven hundred and sixty-four, it shall be lawful for any single Creditor, or two or more Creditors, being Partners, whose Debt or Debts, shall amount to one hundred Pounds or upwards, and for any two Creditors whose Debts shall amount to one hundred and fifty Pounds or upwards, or any three or more Creditors whose Debts shall amount to two hundred Pounds or upwards, of any Person or Persons deemed a Merchant, Banker, Broker, Factor, Scrivener or Trader or Traders, within the Description of the Acts of Parliament relating to Bankrupts, having Privilege of Parliament, at any Time upon Affidavit or Affidavits being made and filed on Record in any of his Majesty's Courts at Westminster by such Creditor or Creditors, that such Debt or Debts is or are justly due to him or them respectively, and that every such Debtor, as he or they verily believe, is a Merchant, Banker, Broker, Factor, Scrivener or Trader, within the Description of the Statutes relating to Bankrupts, to sue out of the same Court a Summons, or an original Bill and Summons, against such Merchant, Banker, Broker, Factor, Scrivener or Trader, and serve him with a Copy thereof; (1) and if such Merchant, Banker, Broker, Factor, Scrivener or Trader, shall

From and after 11 May, 1764, Creditors, to a certain Value, of any Merchant, &c. within the Description of the Laws relating to Bankrupts, having Privilege of Parliament, may, upon Affidavit made of the Debts, and filed in any of the Courts at Westminster, sue out a Summons or original Bill, &c. against such Debtor; and if he shall not, within two months pay, secure or compound for the Debt, he shall be adjudged a Bankrupt; and a Commission may be accordingly sued out against

(1) For the Circumstances necessary to support Commissions upon this Act, see ex-parte Harcourt, 2 Rose, 203.

NO. 11. 4 Geo. III. Cap. 33. A. D. 1764.

not, within two Months after personal Service of such Summons, (Affidavits of the Debt or Debts having been duly made and filed as aforesaid) pay, secure or compound for, such debt or Debts, to the Satisfaction of such Creditor or Creditors or enter into a Bond in such Sum, and with two such sufficient Sureties, as any of the Judges of that Court out of which such Summons shall issue shall approve of, to pay such Sum as shall be recovered in such Action or Actions, together with such Costs as shall be given in the same, he shall be accounted and adjudged a Bankrupt from the Time of the Service of such Summons; and any Creditor or Creditors may sue out a Commission against any such Person, and proceed thereon in like Manner as against other Bankrupts.

But this Act is not to extend to such Debts as were contracted before 8 March, 1764.

II. Provided always, and it is hereby declared, that this Act shall not extend, or be deemed or construed to extend, to any such Debt or Debts as aforesaid, contracted before the eigth Day of March, one thousand seven hundred and sixty-four; any Thing herein before contained to the contrary thereof in any wise notwithstanding.

But any Merchant, &c. committing an Act of Bankruptcy after the 1st Day of this Session, the Creditors may sue out a Commission against him, and the Commissioners proceed thereon, as against other Bankrupts, notwithstanding his Privilege.

III. And be it further enacted by the Authority aforesaid, that if any Merchant, Banker, Broker, Factor, Scrivener or Trader, shall, after the last Day of this Session of Parliament, commit any Act of Bankruptcy, that then, and in such Case, any Creditor or Creditors as aforesaid may sue out a Commission of Bankrupt against such Merchant, Banker, Broker, Scrivener or Trader; and the Commissioners in such Commission, and other Persons may proceed thereon in like Manner as against other Bankrupts; any Privilege of Parliament to the contrary notwithstanding.

Persons intitled to Privilege not subject to Arrest, &c. except in Cases made Felony.

IV. Provided nevertheless, and be it enacted, that Nothing in this Act shall subject any Person intitled to Privilege of Parliament to be arrested or imprisoned, during the Time of such Privilege, except in Cases made Felony by the Acts relating to Bankrupts or any of them.

No. 15.

45 Geo. III. Cap. CXXIV. A. D. 1805.—An Act to amend an Act passed in the fourth Year of his present Majesty, intituled '*An Act for preventing Inconveniences arising in Cases of Merchants and such other Persons as are within the Description of the Statutes relating to Bankrupts, being entitled to Privilege of Parliament and becoming insolvent: and to prevent Delay in the entering Appearances in Actions brought against Persons having Privilege of Parliament.*' (1)

WHEREAS by an Act of Parliament, passed in the fourth Year of his present Majesty, intituled, 'An Act for pre-

(1) For the other Parts of this Act see Cl. 5, No. 2, Class 25, No. 21.

NO. 15.
45 Geo. III. Cap. 124.—A.D.1805.

venting Inconveniences arising in Cases of Merchants, and such other Persons as are within the Description of the Statutes relating to Bankrupts, being entitled to Privilege of Parliament, and becoming insolvent;' it is enacted, that from and after the eleventh Day of May, one thousand seven hundred and sixty-four, it shall be lawful for any single Creditor, or two or more Creditors, being Partners, whose Debt or Debts shall amount to one hundred Pounds or upwards, and for any two Creditors whose Debts shall amount to one hundred and fifty Pounds or upwards, or any three or more Creditors whose Debts shall amount to two hundred Pounds or upwards, of any Person or Persons deemed a Merchant, Banker, Broker, Factor, Scrivener or Trader or Traders, within the Description of the Acts of Parliament relating to Bankrupts, having Privilege of Parliament, at any Time, upon Affidavit or Affidavits being made and filed on Record in any of his Majesty's Courts at Westminster, by such Creditor or Creditors, that such Debt or Debts is or are justly due to him or them respectively, and that every such Debtor, as he or they verily believe, is a Merchant, Banker, Broker, Factor, Scrivener or Trader within the Description of the Statutes relating to Bankrupts, to sue out of the same Court a Summons, or an original Bill and Summons, against such Merchant, Banker, Broker, Factor, Scrivener or Trader, and serve him with a Copy thereof; and if such Merchant, Banker, Broker, Factor, Scrivener or Trader, shall not within two Months after personal Service of such Summons (Affidavits of the Debt or Debts having been duly made and filed as aforesaid,) pay, secure or compound for such Debt or Debts, to the Satisfaction of such Creditor or Creditors, or enter into a Bond in such Sum, and with two such sufficient Sureties as any of the Judges of that Court out of which such Summons shall issue shall approve of, to pay such Sum as shall be recovered in such Action or Actions, together with such Costs as shall be given in the same, he shall be accounted and adjudged a Bankrupt from the Time of the Service of such Summons; and any Creditor or Creditors may sue out a Commission against any such Person, and proceed therein in like Manner as against other Bankrupts.

And whereas the said recited Provision hath by Experience been found to be extremely salutary, but hath on some Occasions, where Bonds have been given, in Pursuance thereof been rendered nugatory, by the Difficulty and sometimes impossibility of enforcing the entering Appearances in the Actions for the Payment of the Sums to be recovered in which such Bonds have been given: and whereas it is fitting and becoming the Honour and Dignity of Parliament to adopt every Means to give Effect to the said recited Act, and all and every the Provisions thereof, be it therefore enacted, &c. that from and after

NO. 15.
47 Geo. III. Cap. 124. A.D. 1806.

the passing of this Act, when any Summons, or original Bill and Summons, shall be sued out against any Person or Persons deemed a Merchant, Banker, Broker, Factor, Scrivener or Trader or Traders, within the Description of the Acts relating to Bankrupts, having Privilege of Parliament and such Affidavit or Affidavits of the Debt or Debts duly made and filed as in the said recited Act mentioned, and such Merchant, Banker, Broker, Factor, Scrivener or Trader, shall enter into such Bond as in the said Act mentioned, to pay such Sum as shall be recovered in such Action or Actions, together with such Costs as shall be given in the same, every such Merchant, Banker, Broker, Factor, Scrivener or Trader, shall also within two Months after personal Service of such Summons, cause an Appearance or Appearances to be entered to such Action or Actions, in the proper Court or Courts in which the same shall have been brought, and on Default thereof he shall be accounted and adjudged bankrupt from the Time of the Service or such Summons: and any Creditor or Creditors may sue out a Commission against any such Person, and proceed therein in like Manner as against other Bankrupts.

Traders having Privilege of Parliament, disobey ing Orders of Chancery, &c. to pay Money, shall be deemed Bankrupts.

VII. And be it further enacted by the Authority aforesaid, that from and after the passing of this Act, when any Decree or Order shall have been pronounced in any Cause depending in the High Court of Chancery, or in his Majesty's Court of Exchequer at Westminster, or any Order shall have been made in the Matter of any Bankruptcy, or in the Matter of any Lunacy, against any Person being a Merchant, Banker, Broker, Factor, Scrivener or Trader, within the Description of the Statutes relating to Bankrupts having Privilege of Parliament, thereby ordering such Person to pay any Sum or Sums of Money to any Person or Persons or into the Bank, in the Name of the Accountant-General of the said Court of Chancery, in Trust, in any Cause depending in that Court, or in the Matter of such Bankruptcy or Lunacy, or to the Deputy Remembrancer of the Court of Exchequer, in Trust, in any Cause depending in that Court (as the Case may be), and the Person so ordered to pay such Sum of Money, so being a Merchant, Banker, Broker, Factor, Scrivener or Trader, within the Description of the Statutes relating to Bankrupts and having Privilege of Parliament, shall disobey such Order; the same having been duly served, then it shall be lawful for any Party or Persons entitled to receive such Sum of Money under and by Virtue of such Order or Decree, or interested in enforcing the Payment thereof, pursuant to such Order or Decree, in the Name of the said Accountant-General or Deputy Remembrancer (as the Case may be), to apply to the Court by which such Decree or Order shall have been pronounced; or in the Matter of such

NO. 15.
45 Geo. III. Cap. 124. A. D. 1805.

Bankruptcy or Lunacy (as the Case may be), to fix a peremptory Day for the Payment of such Money, pursuant to the Terms of such Order or Decree, and such Day shall accordingly be appointed and fixed for that Purpose by an Order made in such Cause, or in the Matter of such Bankruptcy or Lunacy (as the Case may be); and if such Merchant, Banker, Broker, Factor, Scrivener or Trader, within the Description of the Statutes relating to Bankrupts, having Privilege of Parliament, being personally served with such Order, at the least eight Days before the Day therein appointed for Payment of such Money, shall neglect or omit to pay the same according to the Tenor of such Order, then such Person shall be deemed a Bankrupt from the Time of the Service of such last-mentioned Order; and any Creditor or Creditors may sue out a Commission against such Person, and proceed thereon in like Manner as against other Bankrupts.

NO. 16.
46 Geo. III. Cap. 135. A. D. 1806.

No. 15.

46 Geo. III. Cap. CXXXV. 1806.—*An Act to amend the Laws relating to Bankrupts.*

All Conveyances, by all Payments to, and all Contracts with a Bankrupt, made bona fide two Months before the Date of the Commission of Bankrupt, shall be good.

WHEREAS great Inconveniences and Injustice have been occasioned by Reason of the fair and honest Dealings and Transactions of and with Traders being defeated by secret Acts of Bankruptcy in Cases not already provided for, or not sufficiently provided for by Law: for Remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, that in all Cases of Commissions of Bankrupt hereafter to be issued, all Conveyances, by all Payments by and to, and all Contracts and other Dealings and Transactions (1) by and with any Bankrupt, bona-fide made or entered into more than two Calendar Months before the Date of such Commission, shall, notwithstanding any prior Act of Bankruptcy committed by such Bankrupt, be good and effectual to all Intents and Purposes whatsoever, in like Manner as if no such prior Act of Bankruptcy had been committed, provided the Person or Persons so dealing with such Bankrupt had not at the Time of such Conveyance, Payment, Contract, Dealing or Transaction, any Notice of any prior Act of Bankruptcy by such Bankrupt committed, or that he was insolvent, (2) or had stopped Payment.

Bona-fide Creditors shall be admitted to prove Debts, notwithstanding any secret Act of Bankruptcy.

II. And be it further enacted, that in all Cases of Commissions of Bankrupt hereafter to be issued, all and every Person and Persons with whom the Bankrupt shall have really and

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(1) This was held not to extend to an Execution, Blogg v. Phillips, 2 Comp. 129, but see the next Number, by which Provision is made for that Case

(2.) As to Notice of Insolvency, see next Number, Note (1).

NO. 12.
Geo. III, Cap.
&c. A. D. 18—.

bona-fide contracted any Debt or Debts before the Date and suing forth of such Commission, which, if contracted before any Act of Bankruptcy committed might have been proved under such Commission, shall, nowithstanding any prior Act of Bankruptcy may have been committed by the Bankrupt, be admitted to prove such Debt or Debts, and to stand and be a Creditor under such Commission to all Intents and Purposes whatever, in like Manner as if no such prior Act of Bankruptcy had been committed by such Bankrupt, provided such Creditor or Creditors had not, at the Time of such Debt or Debts being contracted, any Notice of any prior (3) Act of Bankruptcy by such Bankrupt committed.

Mutual Debts Credits may set off notwithstanding a secret Act.

III. And be it further enacted, that in all Cases in which under Commissions of Bankrupt hereafter to be issued, it shall appear that there has been mutual Credit given by the Bankrupt and any other Person, or mutual Debts between the Bankrupt and any other Person, one Debt or Demand may be set off against another, nowithstanding any prior Act of Bankruptcy committed by such Bankrupt before the Credit [illegible] given to, or the Debt was contracted by such Bankrupt, in like Manner as if no such prior Act of Bankruptcy had been committed, provided such Credit was given to the Bankrupt two Calendar Months before the Date and suing forth of such Commission, and provided the Person claiming the Benefit of such Set-off had not at the Time of giving such Credit any Notice of any prior Act of Bankruptcy by such Bankrupt committed, or that he was insolvent or had stopped Payment: provided always, that the issuing of a Commission of Bankrupt against such Bankrupt, although such Commission shall afterwards be superseded, or the striking of a Docket for the Purpose of issuing a Commission against such Bankrupt, whether any Commission shall have actually issued thereupon or not, shall be deemed Notice of a prior Act of Bankruptcy for the Purposes of this Act, if it shall appear that an Act of Bankruptcy had been actually committed at the Time of issuing such Commission or striking such Docket.

[illegible] shall be Notice, by 19 Geo. 2, c. 32, s. 1.

Certificates shall Discharge Bankrupts of Debts proveable under this Act.

IV. And be it further enacted, that all Persons against whom any Commission of Bankrupt shall hereafter issue, and who shall be duly found Bankrupts under the same, shall upon obtaining his, her or their Certificate, be discharged of and from all Debts by this Act made provable under such Commission and shall have the Benefit of the several Statutes now in Force against Bankrupts, in like Manner, to all Intents and Purposes, as if such secret Acts of Bankruptcy had not been committed prior to the contracting of such Debts.

(3) Notice of an Act prior to that in which the Commission is supported (being prior to the Petitioning Creditor's Debt), does not prevent the Creditor from proving as he might have done before this Act, ex-parte Bowness, 2 M. and S. 479.

NO. 15.
49 Geo. III. Cap. 135. A. D. 1806.

Commissions of Bankruptcy shall not be avoided by any secret Act of Bankruptcy committed before contracting the Petitioning Creditor's Debt.

V. And be it further enacted, that no Commission of Bankrupt that shall be hereafter issued, shall be avoided or defeated by Reason of any Act of Bankruptcy having been committed by the Person or any of the Persons against whom such Commission shall have issued prior to the contracting the Debt of the Creditor or any of the Creditors upon whose Petition such Commission shall have issued, if such Petitioning Creditor had not any Notice of such Act of Bankruptcy at the Time when the Debt to him was contracted; but that such Commission of Bankrupt and all the Proceedings under the same shall be valid and effectual to all Intents and Purposes, notwithstanding that such prior Act or Acts of Bankruptcy shall have been committed by such Bankrupt. (4)

NO. 16.
49. Geo. III. Cap. 121. A. D. 1809.

No. 16.

49 Geo. III. Cap. CXXI. 1809.—*An Act to alter and amend the Laws relating to Bankrupts.*

So much of recited Act as declares the striking of a Docket Notice of a prior Act of Bankruptcy repealed.

WHEREAS by an Act of Parliament passed in the forty-sixth year of the Reign of his present Majesty, intituled, an Act to amend the Laws relating to Bankrupts, it is amongst other Things provided, that the striking of a Docket for the Purpose of issuing a Commission, whether any Commission shall have actually issued thereupon or not, shall be deemed Notice of a prior Act of Bankruptcy for the Purposes of the said Act, if it should appear that an Act of Bankruptcy had been actually committed at the Time of striking such Docket: and whereas the aforesaid Provision in the said Act hath not been attended with the good Effects which were expected therefrom; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, that the said Act, so far as the same is herein-before recited, shall be and the same is hereby repealed.

(4.) This Section does not dispense with the Necessity of proving an Act of Bankruptcy committed subsequent to the Petitioning Creditor's Debt: it only prevents a Commission when there is a Petitioning Creditor's Debt and a subsequent Act of Bankruptcy, being rendered invalid by the Existence of an Act of Bankruptcy previous to such Debt, Moss v. Smith, 1 Comp. 489, ex-parte Bowness, 2 M. and S. 489. An Act of Bankruptcy, without a Debt to support a Commission upon it, is not sufficient to affect a subsequent Commission, neither can the Validity of a Commission, supported by a sufficient Debt and Act of Bankruptcy, be disputed by the Bankrupt himself or those claiming under him, upon the Ground of a prior Act of Bankruptcy accompanied by a sufficient Debt. See Donovan v. Duff, 9 East 21, ex-parte Donovan, 15 Ves. 6. The Objection itself, when no Commission is taken out, stands upon very unsatisfactory Grounds, even with the Qualifications which this Clause introduces, and it would be very expedient to extend the Law so as to support the Commission, unless superseded upon Petition, to be presented within a limited Time by the antient Creditor applying bona-fide for a Commission. See Let. Rom. Sec. 21.

NO. 16.
49. Geo. III. Cap. 121.—A. D. 1809.

In what Cases Executions and Attachments against the Lands or Goods of Bankrupts levied more than two Months before the Commission shall be valid.

II. And be it further enacted by the Authority aforesaid, that in all Cases of Commissions of Bankrupt hereafter to be issued, all Executions and Attachments against the Lands and Tenements or Goods and Chattels of the Bankrupt, bona fide executed or levied more than two Calendar Months before the Date and issuing of such Commission, shall be valid and effectual, notwithstanding any prior Act of Bankruptcy committed by such Bankrupt, in like Manner as if no such prior Act of Bankruptcy had been committed; provided the Person, at whose Suit such Execution or Attachment shall have issued, had not at the Time of executing or levying the same any Notice of any prior Act of Bankruptcy by such Bankrupt committed, or that he was insolvent (1) or had stopped Payment: provided always, that the issuing of a Commission of Bankrupt, although such Commission shall afterwards be superseded, shall be deemed such Notice, if it should appear that an Act of Bankruptcy had been actually committed at the Time of issuing such Commission.

In what Case issuing of Commissions deemed Notice.

III. And whereas by an Act of Parliament made in the fifth Year of the Reign of his late Majesty King George the Second, intituled, an Act to prevent the committing of Frauds by Bankrupts, it is amongst other Things enacted, that before the Creditors of any Bankrupt shall proceed to the Choice of Assignees of the Bankrupt's Estates, the major Part in Value of the said Bankrupt's Creditors then present shall, if they think fit, direct in what Manner, how and with whom, and where the Monies arising by and to be received from Time to

(1.) As to Notice of Insolvency, see Bayley v. Schofield, 1 M. and S. 338. The Circumstances of the Case were such as to shew that the Creditor who received his Debt after an Act of Bankruptcy, (the Case depending upon Statute 19, Geo. 2), was aware of Meetings of Creditors and Proposals to pay at different Periods, but was assured the Debtor would have a Surplus, and that it was believed his Affairs would come round; this was held to be a sufficient Notice of Insolvency.—Lord Ellenborough, "By insolvent Circumstances is meant, that a Person is not in a Condition to pay his Debts in the ordinary Course as Persons carrying on Trade usually do."—"The very Term *come round* imports that he was not then solvent." Le Blanc, J. "I take Insolvency, as it respects a Trader, to mean, that he is not in a Situation to make his Payments as usual, and that it does not follow that he is not insolvent, because he may ultimately have a Surplus upon the winding up of his Affairs." There is great Difficulty in saying that the Defendants did not know the Bankrupt to be insolvent. They were from Time to Time informed of his Affairs, and the only Expectation of his Solvency that was held out to them arose from a Speculation of disposing of his Houses to Advantage, and the Opinion of his Attorney only amounted to this, that by Management his Affairs would come round, but that does not make a Man who is unable to pay his Creditors at the Time, a solvent Man." Bayley, J. "I agree with my Brother Le Blanc, that Insolvency means, that a Trader is not able to keep his general Days of Payment; and that he is not to be considered as solvent, because possibly his Affairs may come round.

NO. 16
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Time out of the Bankrupt's Estate, shall be paid in and remain, until the same shall be divided amongst all the Creditors as by that Act is directed; to which Rule and Direction every such Assignee and Assignees afterwards to be chosen are to conform, as often as one hundred Pounds shall be got in and received from such Bankrupt's Estate, and are thereby indemnified for what they do in Pursuance of such Direction of the said Creditors as aforesaid; and whereas the Creditors of Bankrupts do not in all Cases avail themselves of the said Power given them by the said recited Act; and whereas the aforesaid Direction of the said Act has been in many Instances disobeyed by the Assignees of the Estates of Bankrupts, who have, notwithstanding such Direction, kept in their Hands, or employed for their own Benefit, large Sums of Money, Part of the Bankrupt's Estates; be it enacted by the Authority aforesaid, that from and after the passing of this Act, if in any Case the major Part of the Creditors of any Bankrupt shall not before they shall proceed to the Choice of Assignees of the Bankrupt's Estate, direct in what Manner, how and with whom, and where the Monies arising from the Bankrupt's Estate shall be paid in and remain, in Pursuance of the Power given to them by the said recited Act, it shall be lawful for the Commissioners or the major Part of them, and they are hereby required immediately after the Commissioners shall have proceeded to the Choice of Assignees, and at the same Meeting to direct in what Manner, how and with whom, and where the Monies arising by and to be received from Time to Time out of the Bankrupt's Estates, shall be paid in and remain until the same shall be divided amongst the Creditors, as by the said recited Act is directed; to which Rule and Direction the Assignee or Assignees of the Bankrupt's Estate shall conform, as often as one hundred Pounds shall be got in and received from such Bankrupt's Estate, and shall be and are hereby indemnified for what they shall do in Pursuance of such Direction of the said Commissioners as aforesaid: provided that it shall not be lawful for the Commissioners to direct such Monies to be paid into the Hands of the said Commissioners, or any of them, or of the Solicitor to the Commissioners, or into any Banking House, or other House of Trade or Business in which the Commissioners or any of them, or the Solicitor to the Commission, are or is interested or concerned as a Partner or Partners or otherwise.

If the Creditors do not direct how the Money arising from the Bankrupt's Estate shall be paid in, the Commissioners shall give Directions.

To whom such Monies not to be paid.

IV. And be it further enacted by the Authority aforesaid, that from and after the passing of this Act, in all Cases in which any Assignee or Assignees of any Bankrupt's Estate shall wilfully retain in his or their Hands, or otherwise employ for his or their own Benefit, any Sum or Sums of Money, Part of the Estates of such Bankrupts, contrary to the aforesaid Direction of the said recited Act passed in the fifth Year of

Assignees disobeying such Directions to be charged 20 per Cent on the Money retained or employed.

the Reign of King George the Second, or of the aforesaid Direction in this Act contained, he or they shall be charged in his or their Accounts with the Estates of such Bankrupts, with such Sum or Sums of Money as shall be equal to the Amount of Interest computed at the Rate of twenty Pounds per Centum per Annum on all such Sums of Money so retained or employed by him or them, for the Time or Times during which he or they shall have so retained or employed the same, contrary to the said Direction of the said Acts or either of them; and the Commissioners of Bankrupts are hereby required to charge such Assignee or Assignees in their Accounts with such Sum or Sums of Money accordingly.

Commissioners not to declare a Dividend, until a true Statement in Writing be made upon Oath by the Assignees, &c.

V. And, for the Purpose of ascertaining in what Manner the Money which shall from Time to Time come into the Hands of such Assignee or Assignees has been employed, the Commissioners shall in no Case declare a Dividend upon Admission only of a certain Sum in the Hands of the Assignees, but shall require such Assignee or Assignees to deliver upon Oath a true Statement in Writing of all the Sums of Money received by such Assignee or Assignees, and when received by him or them respectively, and on what Accounts and how employed, and shall examine such Statement and compare the Receipts with the Payments, and ascertain what Balances have been from Time to Time in the Hands of such Assignee or Assignees respectively, and shall enquire for what Reason any Sum appearing to be in the Hands of such Assignee or Assignees ought to be retained, and thereupon shall declare a Dividend on the remaining Sum, specifying in their Order the Sum so allowed to be retained, and the Grounds on which they may conceive it proper that the same should be retained, and not divided amongst the Creditors.

After Jan. 1, 1810, if Assignees become Bankrupts, having £100 of the Bankrupt's Estate, in what Case their Certificates shall not discharge their future Effects in Respect thereof.

VI. Provided always, and be it further enacted by the Authority aforesaid, that from and after the first Day of January, one thousand eight hundred and ten, in Case any Commission of Bankrupt shall issue against any Person who is or shall be an Assignee of the Estate and Effects of any Bankrupt, and who shall, at the Time of such Commission issuing against him, be indebted to the Estate of the Bankrupt of whose Estate and Effects he was an Assignee, to the Amount of one hundred Pounds or upwards, in Respect of Money come to his Hands as such Assignee, and wilfully retained or employed by him for his own Benefit, the Certificate of Conformity which may be obtained by such Assignee so becoming Bankrupt as aforesaid, shall only have the Effect of freeing the Person of such Bankrupt from Arrest and Imprisonment, but the future Estate and Effects of every such Person shall remain liable for so much of his Debt

(2.) This Provision is imperative on the Commissioners, ex parte Bray, 1 Rose, 144.

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to the Estate of the Bankrupt of whose Estate and Effects he was an Assignee, as shall not be paid by Dividends under the said Commission, together with lawful Interest for the whole Debt, in like Manner as if he had not obtained his Certificate; the Tools of Trade, the necessary Household Goods and Furniture, and necessary Wearing Apparel of such Bankrupt and his Wife and Children only excepted.

Commissioners may direct the Money paid in on Bankrupt's Estate to be invested in Exchequer Bills.

VII. Provided always, and be it enacted, that it shall be lawful for the Commissioners, upon the Application of the Assignees, or of any five or more of the Creditors who have proved their Debts under the Commission, on notice given to the Assignees of such intended Application, when and as often as it shall appear to the said Commissioners expedient and beneficial to the Estate and Effects of any Bankrupt, that the Money so paid in to any Person or Persons as aforesaid, for the Purpose of being divided amongst the Creditors, or any Money retained to answer any Claim which may have been duly entered upon the Proceedings under the said Bankruptcy, or any Dividends ordered to be retained by the Assignees, should be laid out at Interest, to order and direct that the whole or any Part of such Money shall be invested in the Purchase of Exchequer Bills for the Benefit of such Creditors and Claimants, and to direct where and with whom such Exchequer Bills shall be kept for safe Custody, and to cause such Exchequer Bills to be sold when it shall appear to them necessary and proper, and to direct the Proceeds thereof to be again laid out in the Purchase of Exchequer Bills, or to be applied for the Benefit of the Creditors and Claimants, according to their several Interests, as to the said Commissioners shall seem meet, subject nevertheless to the Authority and Controul of the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal.

Sureties and Persons liable for the Debts of Bankrupts in what Cases to be permitted to prove under the Commission, after having paid such Debts.

VIII. And be it further enacted by the Authority aforesaid, that in all Cases of Commissions of Bankrupt already issued, (3) under which no Dividend has yet been made, or under which the Creditors, who have not proved, can receive a Dividend equally in Proportion to their respective Debts without disturbing any Dividend already made, and in all Cases of Commissions of Bankrupts hereafter to be issued, where at the Time of issuing the Commission any Person shall be Surety for or be liable for any Debt of the Bankrupt, it shall be lawful for such Surety or Person liable, if he shall have paid the Debt, or any

(3.) Conway accepted Bills for the Accommodation of Lloyd and Co. who before the Bills were due became Bankrupts. Conway brought an Action against Lloyd, and recovered Judgment for the Amount paid and Costs, and assigned such Judgment to the Petitioner previous to the passing of the Act. The Petitioner was allowed to prove the Amount paid on the Acceptance, and it was the Opinion of the L. C. that any Claims on the Judgment would be barred by the Certificate, ex-parte Lloyd, 1 Rose, 4, 17 Ves. 246.

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Part thereof in Discharge of the whole Debt, although he may have paid the same after the Commission shall have issued, and the Creditor shall have proved his Debt under the Commission, to stand in the Place of the Creditor as to the Dividends upon such Proof, and when the Creditor shall not have proved under the Commission, it shall be lawful for such Surety, or Person liable to prove his Demand in Respect of such Payment as a Debt under the Commission, not disturbing the former Dividends, and to receive a Dividend or Dividends proportionably with the other Creditors taking the Benefit of such Commission, (4) notwithstanding such Person may have become Surety or liable for the Debt of the Bankrupt after an Act of Bank-

(4.) *Previous to the Act, if the Creditor received the Debt from the Surety, before proving under the Commission, no Proof could be admitted on Behalf either of the Surety or Principal, but if the Proof was made before the Payment, the Surety having discharged his Obligation, was allowed to receive the Dividend, and could also sue the Principal as for the Money paid subsequent to the Bankruptcy, ex-parte Atkinson, Cooke B. L. 264. A Court of Equity would compel the Creditor to prove upon the Estate of the Principal upon the Surety paying the Money into Court, Beardmore v. Cruttenden, Cooke 211, Philips v Smith, cited 10 Ves. 412, ex-parte Rushforth, 10 Ves. 409. In ex-parte Turner, 3 Ves. 243, the Petitioner was Surety to Snaith and Co. for the Bankrupt in £815; Snaith and Co. being Creditors for a larger Amount proved the whole Amount of their Debt; and the Petitioner having paid the Amount for which he was Surety, prayed that the Dividends upon the Proofs to that Amount might be assigned to him, which was allowed, with the Exception that Snaith and Co. might take out of the Dividend so much as would make the Dividend on the Residue of their Debt as much as it would have been if the £815 had been expunged, and the same Principle was admitted with some Disapprobation, in ex-parte Rushforth, 10 Vesey, 409, and was also admitted in Paley v. Field, 12 Ves. 435, see Let. Rom. Sec. 18. But in the late Case, ex-parte Brook, 2 Rose, 334, arising upon the Construction of this Section, the Sureties were allowed the entire Benefit of the Proof notwithstanding the Creditor had a larger Debt. In Wright v. Hunter, 1 East, 20, a solvent Partner of a Bankrupt, who had proved a Partnership Debt after the Bankruptcy, was allowed to recover the Amount beyond his own Share from the Bankrupt, as not bound by his Certificate, being considered as a Surety for the Excess. In Wood and another v. Dodgson, 2 M. and S. 195, the Plaintiffs and Defendant being Partners, the Defendant, upon a Dissolution of the Partnership, took the Stock, and the Defendant covenanted to indemnify them from the Debts; and it was ruled that the Defendant was, by Virtue of the Adele, discharged by his Certificate, in Respect of Debts paid after the Bankruptcy. Per Lord Ellenborough, "The Covenant left the Plaintiffs liable as before to the original Creditors of the Partnership; they were liable at Law as Co-Debtors, but in Equity he was solely liable, and they were Sureties; for by the Covenant he became as between the Parties, the principal Debtor; the Debt was his, although as to other Parties the Plaintiffs remained liable, and therefore when they paid the Debt they paid it in his Discharge. I cannot therefore say that this Case does not fall within this Statute, which does not merely contemplate legal but equitable Liability." The other Judges gave their Opinions to the same Effect. And in ex-parte Young, 2 Rose, 40, where one Partner had misapplied Partner-*

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ruptcy had been committed by such Bankrupt, provided that such Person had not at the Time when he became such Surety, or when he so became liable for the Debt of such Bankrupt, Notice of any Act of Bankruptcy by such Bankrupt committed, or that he was insolvent, or had stopped Payment; provided always, that the issuing a Commission of Bankrupt, although such Commission shall afterwards be superseded, shall be deemed such Notice; (5) and every Person against whom any such Commission of Bankrupt has been or shall be awarded, and who has obtained or shall obtain his Certificate, shall be discharged of all Demands at the Suit of every such Person having so paid, or being hereby enabled to prove as aforesaid, or to stand in the Place of such Creditor as aforesaid, with Regard to his Debt in respect of such Suretyship or Liability, in like Manner to all Intents and Purposes as if such Person had been a Creditor before the Bankruptcy of the Bankrupt for the

Issuing of Commission Notice, though afterwards superseded.

ship Effects and became Bankrupt, the others having discharged all the Partnership Debts, were allowed to prove for the Money taken out of the Partnership Concern. The L. C. after giving his Opinion in Favour of the Proof, independently of the Statute, said, "If it were necessary, however, to seek in the Act of Parliament any Support to the moral Justice of the Case, the Act of Parliament would supply it. If it has been decided that the Section in Question is applicable strictly to Sureties, the solvent Partners are certainly not strictly Sureties; but the other Words, "Persons liable," were adopted for the convenient Latitude of comprehending all those who could not be strictly considered as Sureties and yet might meet the Protection they were entitled to under those general Words. The Acceptor of a Bill of Exchange is not strictly a Surety for the Drawer; the Acceptor is the Person liable, in Respect of his own Engagement; but if the Debt, which the Acceptance adopts, be the Debt of the Drawer, if the Contract between the Drawer and Acceptor be as in an Accommodation Transaction, that the Drawer should be the Person responsible, though the Acceptor would not strictly be a Surety, yet he is "a Person liable." In Cases of this Kind, you must look to all the Circumstances; and if the Circumstances place the Party in the Situation of a Person liable, he is entitled to the Relief provided by that extensive Denomination.—With Respect to Counter bonds given to Sureties, and upon which there has been a legal Forfeiture before the Bankruptcy, see Toussaint v. Martinnant, 2 T. R. 100, Martin v. Court, 2 T. R. 640, Hodgson v. Bell, 7 T. R. 97. and Observations by Lord Loughborough, in ex-parte Walker, 4 Ves. 385. As to Notes given before the Bankruptcy, as a Security for Engagements paid after, ex-parte Maydwell, Cooke, 199, ex-parte Beaufoy, Cooke, 170, ex-parte Clanrickarde, Cooke, 172. As to cross Acceptances, ex-parte Ward, 1794, cited 4 Taunt. 205, Cowley v. Dunlop, 7 T. R. 565, and the Cases there cited, ex-parte Walker, 4 Ves. 373, ex-parte Earle, 5 Ves. 833, and the Observations upon this very complicated Subject in Mr. Christian's Review of the present Section, Vol. 2, 576 to 618.

(5.) The Plaintiff accepted a Bill as Security, after which a Commission issued, which was superseded; the Plaintiff then accepted a second Bill for the Amount of the former, with the Addition of Interest and Stamp; and upon a subsequent Commission the Case was ruled to be within the Act, as being a Continuation of the same Suretyship, Stedman v. Martinant, 13 E. 427.

whole of the Debt in Respect of which he was Surety or was so liable as aforesaid. (6)

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Debts not payable at the Time of the Bankruptcy may be proved, deducting Rebate of Interest.

IX. And be it further enacted by the Authority aforesaid, that all and every Person and Persons who have given Credit, or shall at any Time hereafter give Credit to any Person or Persons who is or are or shall become Bankrupts, upon good and valuable Consideration bona fide, for any Money whatsoever, which is or shall not be due or payable at or before the Time of such Person's becoming Bankrupt, shall be admitted to prove such their Debts in like Manner as if the same were payable presently or not at a future Day, and shall be entitled to and shall have and receive proportional Dividends of such Bankrupt's Estate equally with the other Creditors of such Bankrupt, deducting only thereout a Rebate of Interest for what they shall so receive at the Rate of five Pounds per Centum per Annum, under Commissions which have issued or shall issue in England, and at the Rate of six Pounds per Centum per Annum under Commissions which have issued or shall issue in Ireland, to be computed from the actual Payment thereof to the Time such Debts would become payable, according to the Terms upon which the same were contracted.

In Actions brought by Assignees, the Commission and Proceedings to be sufficient Evidence of the Petitioning Creditor's Debt and the Trading and Act of Bankruptcy, unless Notice be given that those Matters are to be disputed.

X. And be it further enacted by the Authority aforesaid, that from and after the passing of this Act, in any Action now brought or hereafter to be brought by or against any Assignee of any Bankrupt, the Commission of Bankrupt, and the Proceedings of the Commissioners under the same, shall be Evidence to be received of the Petitioning Creditor's Debt, and of the Trading and Bankruptcy of such Bankrupt, unless the other Party in such Action shall, if Defendant, at or before the Time of his pleading to such Action, (7) and if Plaintiff, before Issue joined in such Action, give Notice in Writing to such Assignee that he intends to dispute such Matters or any of them; (8) and where such Notice shall have been given, if such Assignee

(6.) The Discharge, under this Section, must be pleaded, and cannot be given in Evidence on the general Issue, Stedman v. Martinnant, 12 East, 664.

(7.) If Notice has not been given at the Time of Pleading, the Court will give Leave to withdraw the Plea and to plead again with Notice, Radmore v. Gould, 1 Wightw. 80, 1 Rose, 122.

(8.) The Notice may be served on the Attorney, but not by delivery to a Maid Servant, at the House of the Assignee, Howard v. Ramsbottom, 3 Taunt. 526. In Simmonds v. Knight, 3 Camp. 251. Lord Ellenborough held, that the Statute applied to an Action of Trover, brought by the Bankrupt against his Assignees, although not described as such in the Proceedings; but when in Ejectment, the Title under a Bankruptcy, was set up as a Defence, the Assignees not being Parties to the Record, Wood, B. held, that as the Title of the Assignees only accidentally came in Question, in the Course of the Defence, it was a Case to which the Statute was not applicable, Doe dem. Mawson v. Liston, 4 Taunt. 741. In Humphries v. Coggan, 1 Rose, 226, Mansfield C. refused to allow a Witness to be examined to disprove the Petitioning Creditor's Debt, as it stood on the Proceedings, no Notice

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shall at the Trial prove the Matter so disputed, or the other Party shall at the Trial admit the same, the Judge before whom the Cause shall be tried shall, if he shall see fit, grant a Certificate that such Proof or Admission was made upon such Trial, and such Assignee shall be entitled to the Costs, to be taxed by the proper Officer, occasioned by such Notice; and such Costs shall, in Case the Assignee shall obtain a Verdict, be added to his Costs, and if the other Party shall obtain a Verdict shall be set off or deducted from the Costs which such other Party would otherwise be entitled to receive from such Assignee.

The same in Suits in Equity by Assignees against all other Parties to the Suit.

XI. And be it further enacted by the Authority aforesaid, that from and after the passing of this Act, in all Suits in Equity now instituted or hereafter to be instituted by or against any Assignee of any Bankrupt, the Commission of Bankrupt, and the Proceedings of the Commissioners under the same, shall be Evidence to be received of the Petitioning Creditor's Debt, and of the Trading and Bankruptcy of such Bankrupt, as against all the other Parties in such Suit, unless such Parties some or one of them shall within ten Days after Rejoinder in the Cause give Notice in Writing to the Assignee that they or he intend to dispute the said Trading, Petitioning Creditor's Debt or Act of Bankruptcy, or some or one of such Matters, and where such Notice shall have been given, if the Assignee shall prove the Matter so disputed to the Satisfaction of the Court, the Costs occasioned by such Notice, to be taxed by the proper Officer, shall, if the Court see fit, be paid by the Party or Parties giving such Notice to the Assignee, and the Service of such Notice may be proved by Affidavit upon the hearing of the Cause. (9)

XII. And be it further enacted by the Authority aforesaid, that from and after the passing of this Act, no Action shall be brought by any Creditor or Creditors who have proved or shall prove any Debt under any Commission of Bankrupt

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having been given, considering that, by the Statute, the Proceedings were conclusive Evidence. The contrary was held by Lord Ellenborough, in Ellis v. Shirley, 3 Camp 434, and in Mills v. Bennett, 2 M. and S. 556, the Court held, that the Statute only enacts, that the Proceedings shall be Evidence, but that, like all other Evidence, it was liable to be controverted by Evidence. In Collinson v. Hillear, 3 Camp. 30, Lord Ellenborough held, that the Proceedings might be proved by shewing that they were received from the Custody of the Solicitor to the Commission, or by proving the Hand-writing of one of the Commissioners.

A Person, against whom an Action is brought, is not estopped from disputing the Bankruptcy by having proved a Debt under the Commission, but, upon giving Notice, may require the Trading, &c. to be proved, Rankin v. Horner, 16 East, 191, see Let. Rom. Sec. 28.

(9.) Defendant permitted to withdraw his Rejoinder and rejoin de novo, giving Notice of Intention to dispute the Act of Bankruptcy, &c. upon Affidavit of the Solicitor that the Notice was omitted through Inadvertence, and that he believed it was essential to the Justice of the Case, Brickwood v. Millar, 2 Rose, 216.

against the Assignee or Assignees of the Estate of such Bankrupt, for the Amount of any Dividend declared by the Commissioners under such Commission; but in all Cases in which the Assignee or Assignees of any Bankrupt shall refuse or omit to pay any Dividend declared under any Commission of Bankrupt, it shall be lawful for the Creditor or Creditors entitled to the same, to Petition the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal, for Payment thereof; and it shall be lawful for the Lord Chancellor, Lord Keeper or Lords Commissioners for the Custody of the Great Seal on hearing such Petition, not only to order the Payment of such Dividend, but also in all Cases in which it shall appear to him or them that the Justice of the Case shall require it, to order Payment of Interest for the Time that such Dividend shall have been withheld, and of the Costs of the Application. (9)

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No Action to be brought against Assignee for Dividends, but the Remedy to be by Petition to the Lord Chancellor.

XIII. 'And whereas great Inconveniences have arisen from the Necessity which now exists of the Attendance of Commissioners of Bankrupt in Prison to take the Examinations of Bankrupts charged in Execution;' be it therefore enacted by the Authority aforesaid, that every Bankrupt being in Custody at the Time of his or her last Examination, although charged in Execution, shall be brought before the Commissioners to be examined by them in the same Manner as is now practised with Respect to Bankrupts in Custody on Mesne Process, and the Gaoler or Keeper of the Prison in which such Bankrupt is or shall be confined, shall be fully indemnified bo the Warrant

Bankrupts in Custody in Execution to be brought before the Commissioners to be examined.

(9.) Although it was held previous to this Act that an Action was maintainable against the Assignee for the Dividends; and in Brown v. Bullen, Doug. 392, that the Assignee could not set off against such Action a Debt to himself. Lord Redesdale, in Gardener v. Shannon, 2 Sch. and Lefroy, 228, said that he should always restrain such Actions as contravening to the Policy of the Bankrupt Laws. Such Actions he said he knew had been maintained, but whatever might be the Decisions of Courts of Law on the Subject, he thought it was the Duty of the Great Seal not to permit them. The Administration of the Effects is vested in the Great Seal, and the Creditor coming to prove his Debts submits to that Authority.— I have never been able to discover the Inconvenience of a Person being allowed to sue at Law for what is allowed to be a legal Debt which ought to be paid. An Assignee would come with a very ill Grace before the Great Seal to complain of an Action being brought for the Dividend without offering to pay such Dividend, or having any Reason to allege for the Non-payment of it. In Case there is any such Reason it is rather Ground for a direct Petition to expunge the Proof, than a mere Cause for staying the Dividend, and the Remedy by Petition would be often less efficacious than that by Action at Law. When the Banker of the Estate failed pending an Application against the Assignees for Payment of the Dividend, which the Assignees endeavoured to oppose on the Ground of Usury, it was held by the L. C. that the Assignee must bear the Loss, ex-parte Graham, 1 Rose, 456.

NO. 16. 49 Geo. III. Cap. 121.—A. D. 1809

of the Commissioners for bringing up such Bankrupt for such Purpose.

Proving a Debt under a Commission to be an Election not to proceed against the Bankrupt by Action in Respect of such Debt.

XIV. And be it further enacted by the Authority aforesaid, that from and after the passing of this Act, it shall not be lawful for any Creditor, who has or shall have brought any Action, or instituted any Suit against any Bankrupt, in Respect of any Demand which arose prior to the Bankruptcy of such Bankrupt, or which might have been proved as a Debt under the Commission of Bankrupt issued against such Bankrupt, to prove a Debt under such Commission for any Purpose whatever, or to have the Claim of a Debt entered upon the Proceedings under such Commission, without relinquishing such Action or Suit, and all Benefit from the same; and that the proving or so claiming a Debt under a Commission of Bankrupt by any Creditor, shall be deemed an Election by such Creditor, to take the Benefit of such Commission with Respect to the Debt so proved or claimed by him: provided always, that such Creditor shall not be liable to the Payment to the Bankrupt or his Assignees, of the Costs of such Action or Suit which shall be so relinquished by him: and provided also, that where any such Creditor shall have brought any Action or Suit against such Bankrupt jointly with any other Person or Persons, his relinquishing such Action or Suit against such Bankrupt or Bankrupts shall not in any Manner affect such Action or Suit against such other Person or Persons. (10)

(10) Before the Act a Creditor who had proved his Debt might still proceed at Law against the Bankrupt, unless he had received a Dividend, and was at Liberty to elect whether he would receive a Dividend under the Commission, or proceed in his Action until a Dividend was made, or he had taken out Execution, see ex-parte Callow 3 Ves. 1, ex-parte Sharpe, 11 Ves. 203; and sometimes a Creditor was allowed to refund the Dividend in Order to proceed at Law, but it was not permitted to a Creditor who had signed his Certificate, ex-parte Freeman, 4 Ves. 856. It was also held that the Petitioning Creditor had no Right to elect to proceed by Action, ex-parte Lewis, 1 Atk. 154.

With Respect to the Construction of the Statute—where the Plaintiff having received two Bills sent the Bankrupt, and took him in Execution upon the one, and afterwards proved his Debt on the other, upon a Petition by the Bankrupt to be discharged, the Lord Chancellor said, that it was a remedied Law, and must ever receive a liberal Construction, and made the Order on the Creditor without Prejudice to his proving under the Commission, ex-parte Dickson, 1 Rose, 98. A Creditor who proved after obtaining Judgment cannot proceed against the Bail, Linging v. Comyn, 2 Taunt. 246. A Creditor who had proved under a separate Commission against one of several Partners, not allowed by the L. C. to proceed in a joint Action against him and the others, without giving him an Indemnity for Costs, ex-parte Head, 1 Rose, 460. The Bankrupt had first made an unsuccessful Application to the Court of Law, n. ibid: but the Proof does not discharge the Partner, Heath v. Hale, 5 Taunt. 526. A Creditor who has proved cannot proceed at Law against the Bankrupt in Respect of its being a second Commission under which there has not been a Divi-

XV. Provided also, and be it further enacted, that this Act shall not extend to that Part of the United Kingdom of Great Britain and Ireland which is called Scotland.

NO. 16. 49 Geo. III. Cap. 121.—A.D. 1809.

This Act not to extend to Scotland.

XVI. And be it further enacted by the Authority aforesaid, that all and every Person or Persons who have effected or shall effect any Policy or Policies of Insurance upon Ships, Goods, Wares, Merchandize or other Effects, with any Person as a Subscriber or Underwriter, who is or are or shall become Bankrupt, shall be admitted to prove any Loss to which such Bankrupt is or shall be liable in Respect of his Subscription to such Policy or Policies, notwithstanding the Person or Persons effecting such Policy or Policies is not or are not the Person or Persons beneficially interested in such Ships, Goods, Wares, Merchandize or other Effects, provided the Person really interested is not in that Part of the United Kingdom in which the Commission of Bankrupt shall have issued in the Proceedings under which such Loss is to be proved.

In what Case Persons effecting Policies of Insurance with Underwriters who become Bankrupts admitted to prove Loss.

XVII. And be it further enacted by the Authority aforesaid, that it shall be competent to any Annuity Creditor of any Person against whom a Commission of Bankrupt shall issue after the passing of this Act, whether the same shall be secured by Bond or Covenant, or Bond and Covenant, or by whatever Assurance or Assurances the same shall be secured, and whether there shall or shall not be or have been any Arrears of such Annuity at or before the Time of the Bankruptcy, to prove under such Commission as a Creditor for the Value of such Annuity, which Value the Commissioners shall have Power and are hereby required to ascertain, and the Certificate of every Bankrupt under whose Commission such Proof shall be or might have been made, shall be a Discharge of such Bankrupt against all Demands whatever in Respect of such Annuity and the Arrears and future Payments thereof, in the same Manner as such Certificate would discharge the Bankrupt with Respect to any other Debt proved or which might have been proved under the Commission. (11)

Annuity Creditors admitted to prove the Value under any Commission.

dend of 15 Shillings in the Pound, Read v. Sowerby, 3 M. and S. 78. The Creditor need not discontinue before he proves, the Proof itself operates as a Discontinuance, ex-parte Woolley, 1 Rose, 394. With Respect to the Effect of this Provision in making a Proof conclusive for all Purposes, and disabling a Creditor from proving in Order to dissent from the Certificate, see Let. Rom. Sec. 1, Rom. Sec. 16, 30.

(11.) By the Law as it stood previous to the Statute, a Grantee of an Annuity could not prove in Respect of the Value of such Annuity unless it was secured by a Bond which had become forfeited at Law by some Default of Payment, and in such Case although all Arrears had been paid up before the Bankruptcy, a Proof might be admitted in Respect of the Penalty of the Bond, for a Value to be set on the Annuity, but if the Annuity was also secured by Covenant, the Annuitant notwithstanding the Certificate might sue upon such Covenant, see ex-parte Le Compte, 1 Atk. 251, Perkins v. Kempland, 2 B. Rep.

NO. 16.
49 Geo. III. Cap. 121.—A. D. 1809.

The Signature and Consent of Three Parts in Five in Number and Value of the Creditors of the Bankrupt to the Allowance of his Certificate and Discharge shall be sufficient to authorize all Acts for his Benefit.

XVIII. And be it further enacted, that in all Cases of Commissions of Bankrupt heretofore issued, and in which the Bankrupts have not obtained their Certificates, and in all Cases in which Commissions of Bankrupts shall hereafter be sued forth, the Signature and Consent of Three-Parts in Five in Number and Value of the Creditors of the Bankrupt or Bankrupts who shall be Creditors for not less than twenty Pounds respectively, and who shall have duly proved their Debts under the Commission, or some other Person by them duly authorized thereunto, to the Allowance and Certificate and Discharge of the Bankrupt or Bankrupts, shall be, to all Intents and Purposes, as available for the Benefit of the Bankrupt or Bankrupts as before the passing of this Act the Signature and Consent of Four-Parts in Five in Number and Value of such Persons would have been available; and such Signature and Consent of Three-Parts in Five in Number and Value of such

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No. 6, Cottrell v. Hooke, Doug. 97, Wyllie v. Wilkes, Doug. 510. The same Principle of admitting the Proof of a contingent Debt secured by a Penalty which has once become forfeited at Law is allowed in several other Cases, and see ex-parte Rowlatt, 2 Rose, 416.

In the Construction of the Act it has been held, that when four Persons had covenanted for the Payment of an Annuity, and given a Warrant of Attorney to confess Judgment, and one of them become Bankrupt and obtained his Certificate, the Obligation was not discharged as to the other three; and a Rule for setting aside a *Fieri Facia* on the Judgment was made absolute as to the Bankrupt, and discharged as tothe others, see Observations of Chambre, J. as to certain Difficulties in the Application of the Act with Respect to joint Grants of Annuities, Baxter v. Nicholls, 4 Taunt. 90. In Page v. Russell, 2 M. and S. 551, a Person discharged by the Insolvent Act as to an Annuity was held liable to his Surety for Payments which had accrued due since the Discharge, and which the Surety had been obliged to pay, and the Court said that the same would be held good under this Statute.

With Regard to the Principle upon which an Annuity is to be valued, an Annuity on the Life of the Bankrupt was purchased at £8,000, the Bankrupt being in an infirm State of Health: at the Time of the Bankruptcy he had recovered, and the Annuity was then valued at £10,000, for which Sum the Proof were allowed, ex-parte Thistlewood, 1 Rose, 290. In ex-parte Whitehead, 1 Merivale, 10, the Principle upon which in general the Value should be estimated came very much into Discussion. It appeared that there had been great Uncertainty in the Practice of the Masters in Chancery and Commissioners. The L. C. decided that the Rule adopted by the Commissioners of estimating the Value by the Price agreed to be paid for the Redemption was wrong without determining what the proper Rules hould be. Upon a subsequent Petition in the same Case, 1 Merivale, 127, the L. C. said, that the Conclusions at which he arrived were, that as there was not any peculiar Circumstances in the Case to affect the Price as it was altered by the Effluxion of Time, he ought to presume that the Parties acted fairly at the Time the Contract was made, and that the Value of the Annuity wasthe original Sum given, with the Variation occasioned by the lapse of Time since the Grant, and see the Order made accordingly, ibid 724. My own Practice as a Commissioner had been to adopt the Rules for valuing Annuities for the Purposes of the Legacy Duty contained in Statute 36, Geo. 3, c. 52, considering that Act as a legislative Declaration of the average Value.

Persons, shall be sufficient to authorize all Acts to be done by the Lord Chancellor, Lord Keeper and Lords Commissoners of the Great Seal, and the Commissioners in such Commissions of Bankrupt, and all others, for the Benefit of the Bankrupt or Bankrupts, which under any prior Act or Acts of Parliament would have been authorized by the Signature and Consent of Four-Parts in Five in Number and Value of such Persons.

NO. 16. 49 Geo. III. Cap. 121.—A. D. 1809

Bankrupts entitled to Leases or Agreements for Leases delivering up the same to Assignees, not liable afterwards for the Rent nor in Respect of Covenant.

XIX. And be it further enacted, that in all Cases in which a Commission of Bankrupt shall be sued forth against any Person after the passing of this Act, and such Person shall be entitled to any Lease or Agreement for a Lease, and the Assignees shall accept the same and the Benefit therefrom, as Part of the Bankrupt's Estate and Effects, the Bankrupt shall not be, or be deemed to be, liable to pay the Rent accruing due after such Acceptance of the same as aforesaid, and after such Acceptance the Bankrupt shall not be liable to be in any Manner sued in Respect or by Reason of any subsequent Non observance or Non-performance of the Conditions, Covenants, or Agreements therein contained, (12) provided, that in all such Cases as afoseraid, it shall be lawful for the Lessor or Person agreeing to make such Lease, his Heirs, Executors, Administrators or Assigns, if the Assignees shall decline, upon their being required so to do, to determine whether they will or will not so accept such Lease or Agreement for a Lease, to apply by Petition to the Lord Chancellor, Lord Keeper or Lords Commissioners of the Great Seal, praying that they may either so accept the same or deliver up the Lease or Agreement for the Lease, and the Possession of the Premises demised or intended to be demised, who shall thereupon make such Order as in all the Circumstances of the Case shall seem meet and just, and which shall be binding on all Parties. (13)

(12.) It was before held, that if the Assignees took the Lease, the Bankrupt was not subject to an Action of Debt, but remained liable in Covenant, the Law being assimilated to the Case of an Assignment by the Lessee with the Consent of the Lessor, upon the non cnsical Notion of every Man being a Party to an Act of Parliament, as if the general Law of the Land derived its Force from the fiction of Consent, or as if supposing that fiction to be admitted, it followed as a Consequence, that the Lessor consented to the Facts upon which the Law was to operate. Many Persons have lamented that the Act did not go further in discharging Bankrupts from Rent Charges, &c. notwithstanding that in every other Case of a Discharge to the Bankrupt, there is a Satisfaction under the Commission to the Creditor. I believe it is not unfrequent for Persons to become Bankrupts for the mere Purpose of avoiding a disadvantageous Lease which may be taken by a friendly Assignee and assigned to a Beggar.

In Doe dem. Cheers v. Smith, 1 Marsh, 359, it was held that a Bankrupt to whom the Lease had been assigned by a Vendee of the Assignees was not bound by his Covenant not to assign, the Statute having put an End to the Covenant.

(13.) See ex-parte Annes, 1 Mad, 76.

No. 17.

56 Georgii III. Cap. CXXXVII. A. D. 1816.—An Act to extend the Provisions of an Act of the first Year of the Reign of King James the First, intituled *An Act for the better Relief of the Creditors against such as shall become Bankrupts.*

NO. 17.
56 Geo. III. Cap. 137.—A. D. 1816.

WHEREAS in and by an Act passed in the first Year of the Reign of his late Majesty King James the First, intituled *An Act for the better Relief of the Creditors against such as shall become Bankrupt,* it was amongst other Things enacted, that no Debtor of a Bankrupt should be thereby endangered for the Payment of his or her Debt truly and bona fide to any such Bankrupt, before such Time as he should understand or know that he was become Bankrupt: and whereas the Provisions of the said Statute have been found to be beneficial, and it is also expedient to make such Provisions respecting the Delivery of Goods, Wares, Merchandizes and Effects, as are herein-after contained: may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, that no Person or Persons, Body Politic or Corporate, Joint Stock or other Company, having in his, her or their Possession or Custody any Goods, Wares, Merchandizes or Effects belonging to any Person or Persons who shall be or become Bankrupt, shall be endangered for or by Reason of the Delivery of any such Goods, Wares, Merchandizes or Effects truly and bona fide to such Person or Persons, or to his, her or their Order, before such Time as the Person or Persons, Body Politic or Corporate, Joint Stock or other Company, having such Goods, Wares, Merchandizes or Effects in his or their Possession or Custody, shall understand or know that the Person or Persons to whom such Wares, Merchandizes or Effects do or shall belong, . or are become Bankrupt.

Persons not endangered by Delivery of Goods or Effects to Bankrupts, not having a Knowledge of such Bankruptcy.

II. Provided nevertheless, and be it enacted, that in all Cases in which it shall be proved that the Person or Persons acting on the Behalf of any Body Politic or Corporate, Joint Stock or other Company, in the paying or causing or directing the Payment of any Debt, or in the delivering or causing or directing the Delivery of any Goods, Wares, Merchandizes or Effects to any Person or Persons, understood or knew that the Person or Persons or any of them to whom such Debt was paid, or such Goods, Wares, Merchandizes or Effects were delivered, was or were or had become Bankrupt, such Body Politic or

Body Politic, &c. deemed to know Bankruptcy if Person acting on their Behalf knew it.

Corporation, Joint Stock or other Company, shall be deemed and taken to have understood and known the same.

NO. 17.
56 Geo. III. Cap. 137.—A. D. 1816.

☞ *A Bill for making further Provisions respecting Bankrupts' Certificates is depending at the Time of this Sheet being printed; if it should pass into a Law before the Completion of the Work, it will be inserted in after the Letter to Sir Samuel Romilly.*

APPENDIX

TO

PART IV. CLASS XXVI.

A

LETTER

TO

SIR SAMUEL ROMILLY, KNIGHT,

ON THE

REVISION

OF THE

BANKRUPT LAWS.

Originally published in 1810.

THE following Letter, which is referred to in several of the Notes to the preceding Class, was written and published about the beginning of the Year 1810, in Consequence of a Rumour which then prevailed, of an Intention on the Part of the Gentleman to whom it is addressed, to undertake the general Revision of the Bankrupt Laws. It was composed in considerable Haste, so far as regards the particular Language, in Order that any Suggestions which it contained, might be offered in sufficient Time to receive such Attention as they should be deemed to merit; but most of the Observations upon the different Branches of the Subject, were formed upon long and attentive Consideration, in the Course of a very considerable Practice which I had at that Time had, in the Execution of the Duties of a Commissioner of Bankrupt. As I have not upon any subsequent Reflection found Reason to alter the general Views which I had taken upon the Subject, I have thought it proper to present them, with very little Variation, in the Language in which they were originally expressed, subjoining a few Notes of a practical Nature upon Points that could not with equal Convenience have been introduced, as applicable to the particular Construction of any of the Provisions in the foregoing Series of Statutes.—The additional Notes are distinguished by being in Brackets.

A

LETTER

TO

SIR SAMUEL ROMILLY, &c.

SIR,

AS it is a prevalent, and by no means an improbable Opinion, that you have it in Contemplation to bring before Parliament a general and systematic REVISION of the BANKRUPT LAWS, it will, perhaps, not be deemed presumptuous to submit to your Attention some Observations connected with that Object, and which relate to the carrying it into Execution with the greatest Advantage; and I conceive this public Method of Address to be more desirable than any private Suggestions, as it may be calculated to promote a general Investigation of the Subject, and lead to other Communications of greater Value and Importance.

The Extent and Magnitude of the Subject must be admitted to present considerable Difficulties, to those who are disposed to embrace it in its full Extent, and the Utility of the undertaking will be much more than commensurate to its Celebrity; but I trust that you will not be satisfied with taking it up on any smaller Scale, as it seems perfectly evident that many of the practical Inconveniences which have resulted from the present System, arose from its consisting of Materials that have been added together for more than two Centuries, without sufficiently adverting to their Congruity and Adaptation.

I.

GENERAL OBJECTS OF THE BANKRUPT LAW.

1. The fair Distribution of the Property.

2. The Liberation of the Debtor.

I. The general System of the Law respecting Bankruptcy and Insolvency, may be considered as having two Objects—first, the equal Distribution of the Property, in Proportion to the Debts. Second, the Liberation of the Debtor, who has made a fair Surrender of his Property to the general Satisfaction of his Creditors. These Objects, by their Concurrence, import a mutual Interest in the Creditor and Debtor; and the chief Aim of every System of Legislation upon the Subject, is to combine and regulate them with the greatest Advantage. But unfortunately the Law of England cannot be allowed to have followed that Aim in a very beneficial Manner. To advert to the obsolete Statute of Henry VIII. would not materially assist the Purpose of the present Discussion, and the existing System of Bankrupt Law may be considered as originating in the Statute of 13 Eliz.; but that Statute, and those which followed it for more than a Century, were directed, exclusively, to the former of the preceding Objects, and the latter was first attended to in the expired Statute of the 4th of Ann, c. 17. I regret that the Provisions of this Statute do not fully appear in any of our Collections on the Bankrupt Laws, and that I have not at present an Opportunity of stating them more particularly, especially as they are the Subject of Reference in subequent Statutes, which still retain their Authority.* It is obvious, however, that this Statute, by introducing a new Interest into the Subject, produced a most important Alteration in the System. Every thing before was Seizure, Penalty and Coercion. The Integrity of an insolvent Trader might prevent his offering any Obstruction to the general Arrangements adopted for the Benefit of his Creditors, but the more powerful Motive of his Interest did not prompt him to assist and promote them. But now a mutual Benefit was introduced, and the Debtor became materially interested in assisting to secure for his Creditors the greatest possible Salvage from the Wreck of the Estate. This Law may, at least in its practical Effects, be considered as admitting for the first Time, the Application of the Principle, that Insolvency may be occasioned by Misfortune, or by venial Indiscretion, as well as by intentional Misconduct, so far as to give a Claim of Remission and Relief. But another Century has elapsed, and the Provisions still remain in all their Vigour, which consider the Existence of a Case of a Fraud or Compulsion, as the necessary Foundation of Arrangements, of which the Effect is thus mutually beneficial—and so far is an insolvent Debtor from being allowed by the mere Assent of his Creditors, to submit himself and his Property to the Regulations of the Bankrupt Law, that his Participation in the

[* See the Act at large 1 Christian 59, and the Reference to the Provisions respecting the Certificate, ante Page 80.]

Adoption of any Measures for that Purpose, is fatal to the Measures themselves; that no Conduct is watched with greater Jealousy or animadverted upon with more pointed Acrimony. To this important Part of the Subject therefore, Sir, I trust that your Attention will be most particularly directed, and that unless some very powerful Objections present themselves to your Mind, which, upon very frequent Consideration, have never occurred to mine, you will think it proper to apply the Principle of a mutual Benefit, already adverted to, to its full and fair Extent; and to promote the Adoption of a Rule, that when a Debtor, in insolvent Circumstances, is willing to surrender his Effects, according to the Direction of the Bankrupt Laws, and Creditors of a certain Amount assent to such a Surrender taking place, a Commission may issue for the Purpose, and that the other Provisions of the Law respecting Bankrupts may be applied; and consequently that the same Assent of Creditors which is sufficient to induce the Liberation of the Debtor, in Case of a Commission issuing at the mere Instance of a Creditor, may be applied in the Case of a voluntary Cession.

II.
OF VOLUNTARY CESSION.

II. To you, Sir, it is not necessary to state, that I am not offering any new Principle of my own: and that in the ancient System of the Law of France, which, however occasionally corrupt in its Administration, was studied and conducted upon scientific Principles;—the *Contrat d'Atermoiement* (according to which the Agreement of three-fourths in Value of the Creditors to an Act of Composition, was obligatory upon the Remainder), was attended with nearly the same Effects as a Commission of Bankruptcy and Certificate in England.* But it may be to others a more satisfactory Argument, so far as the Argument from Precedent and Authority is to be applied, that the same Principle has been actually adopted by the Parliament of Great Britain, and that the Boundary between England and Scotland marks the Limits of its Admission and Rejection. The Enactment to which I allude is contained in the Statute of the 33d Year of the present Reign, Ch. 74, S 16, and is so apposite to the present Purpose, that I think it proper to extract it:—" If any Merchant, or

[* By Statute 8, W. 3, 18, Provision was made for Relief of Creditors, by making Compositions with their Debtors, in Case two thirds in Number and Value do agree; but the Act was repealed in the following Section by Stat. 9 and 10, W. 3, c. 29, in the Preamble of which it is stated that the Act had not answered the End for which it was intended, in Regard that, notwithstanding the Provisions in the said Act for preventing Frauds in the making such Compositions, many fraudulent Practices have been committed, by making pretended Agreements with Persons who were not real Creditors, and for greater Advantages than what were expressed in such Compositions; which Practices have (as there is just Reason to fear) occasioned much Perjury.]

"other Person described as above, and not within the Excep-
"tions, whether Diligence has been executed against him or
"not, shall make a joint Application to the Court of Session,
"along with any Creditor whose Debt shall amount to the
"Sum of £100, or any two Creditors whose Debts shall
"amount to the Sum of £150, or any three or more Creditors
"whose Debts shall amount to the Sum of £200 or upwards,
"whether such Debts be liquidated or stand upon an open
"Account; and Oath being made as above to the Verity of
"these Debts, and the Parties or their Agent also making
"Oath to their Knowledge or Belief, of the Debtor's being
"within one or other of the Descriptions, and not within the
"Exceptions aforesaid, the Court is required to award Seques-
"tration of the Debtor's Estate, and Procedure shall go on
"as before directed." Perhaps, Sir, this Part of the Subject might not strictly be the first in Point of Arrangement, but as I certainly regard it as first in Point of Importance, when I reflect upon the numerous Inconveniences which daily occur from an Adherence to the Principle opposite to that for which I am contending, I have selected it for the Commencement of my Observations, with the anxious Wish, that whenever the general Subject is introduced to the Attention of the Legislature, this Part of it may receive the most full and deliberate Consideration.

TRADING.

III The next Topic to which I think it material to advert is, the Description of Persons upon whom the Laws respecting Bankruptcy shall attach; and here, if I were to state merely my own Individual Opinion, I should be very brief indeed, as notwithstanding all the Commendations that have been bestowed upon the Principle which confines them to Persons engaged in Commerce, I should think that the Rules of equitable Distribution and personal Exoneration, should be as extensive as the Cases of Insolvency themselves, but I am quite aware that even if I had your Concurrence in this Opinion, the Suggestion of any such Regulation would be perfectly nugatory; the Reception of your Proposal for subjecting Lands to simple Contract Debts in Case of Death,* sufficiently evinces that a Proposal going to a greater Extent upon the same Principle, would be instantly rejected. I shall, therefore, take it for granted, that the Operation of the Law at present under Discussion, is to be confined to Persons obtaining a Credit for the Purposes of Trade. But how infinitely short is the present System of the Bankrupt Law from embracing all the Persons to whom this Description may be fairly and reasonably applied. Without enquiring what is the Reason, or whether there is any Reason for the particular

[* See upon this Subject the Note to Statute 47 Geo. 3, Sess. 2, Ch 74, ante Class XXV. No. 26]

statutory Exceptions of Drovers, Farmers, and Graziers, I shall refer at once to the general Rules, that the Bankrupt Laws are confined to certain Classes, particularly described as Brokers, Bankers, Factors, &c. and to others seeking a Living by buying and selling. There are many curious Cases of Practice continually arising from the Application of these Rules, so as to include incidentally, Persons who are not directly within the Description. An Innkeeper, as such, cannot be made a Bankrupt, because his Profit is not derived principally from buying and selling, but in a great Degree from the Attention of himself and his Servants (which, by the bye, is the Case of every Manufacturer), but, if he sells any Liquor out of his House, not by Way of Favour, but indiscriminately to all Persons who will apply, however small his Transactions in that Way may be, he is a Dealer; a very little Enquiry will shew that an Innkeeper receives, instead of conferring a Favour, by selling his Liquors to be consumed out of his House, rather than in it, and consequently it would be very rare indeed to find any Instance in which it would be refused; yet on this petty Distinction the Application of the Bankrupt Law is permitted to depend; while the Credit and Capital required for the Purpose of incidental Dealing is perfectly insignificant as compared to that of the principal Trade.

The Business of a Money Scrivener was once very well known as a distinct and extensive Employment. I am not certain whether there is still any existing Instance of the Kind—but such Instances, if any, are certainly very few; but if an Attorney happens to receive a Sum of Money to put out to Interest, and charges Procuration, as all Attornies will do if they can, and afterwards fails in his Circumstances, he is introduced into the Gazette as a Money-Scrivener, which he could not be in Respect of any pecuniary Confidence, however extensive, which he may have had in the other Exercise of his Profession.*

Persons who undertake the Erection of Buildings and other Works have Occasion for considerable Sums of Money, and extensive Credit in the Prosecution of their Business, but they cannot be made Bankrupts, as they do not sell. The Workers of Mines are at great Expence in Engines, Machinery, and Wages, and acquire considerable Credit upon Bills of Exchange; but they cannot be made Bankrupts, as they do not buy for the Purpose of Sale, and there is nothing in which technical Reasoning militates against common Sense more extensively than in the Distinction between Persons who can, or who cannot be made Bankrupts, as exercising the Trade of a Brick-maker.

[* The Description of Persons liable to be made Bankrupts as Money Scriveners, has been reduced to much narrower Limits by subsequent Decisions, see 21 James 1, c. 19, Note ante Page 58.]

But the following Investigation, which has occurred to me in Practice, will shew, I conceive, as strongly as any Thing can do, the Necessity of giving a more enlarged Description to the Occupations which fall within the Scope of the Bankrupt Laws. The Business of a Dyer does not seem very properly to fall within any general Description in the Statutes, but being called upon to open a Commission against a Person of that Business, I was shewn the second Section of the third Chapter in Mr. Cooke, in which Dyers are enumerated amongst several other Traders—and, satisfied with the Authority, I acted accordingly. A short Time afterwards I was called upon a Commission against a Bleacher. The mere Distinction in Fact between a Dyer and a Bleacher is, that the Drugs of the first are incorporated with the Cloth which he dyes, and may therefore, though with considerable Perversion of Language, be said to be sold; but the Drugs of a Bleacher, though the Business requires also an extensive Credit, are used merely in disengaging the Pieces from an adventitious Colouring. As my Authority here was silent, I thought it necessary to investigate the Subject a little further, and to trace the Origin of the Law in the Case of Dyers The Reference from Mr. Cooke is to Comyns's Digest, a most valuable Work, but which was never intended by its learned Writer to be quoted as Text Authority. Turning to Comyns, I find amongst Traders who may be made Bankrupts, "Dyers, 2 Cro. 585." One Step further, then, takes us to the Origin of the Doctrine in the supposed Authority of the Case of Squire v. Johns, which was an Action for Words. The Declaration stated that the Plaintiff was a Dyer, *and got his Living by buying and selling*; and the Defendant said, he was a Bankrupt, and not worth three Half-pence. It was assigned for Error, that the Words were not actionable, for a Dyer being a mechanical Trade, cannot have any Action for them: and it was cited to have been adjudged that a Weaver shall not have an Action for such Words. But in the principal Case, the Court resolved, that the Action is maintainable for *being alleged that he obtained his Living by buying and selling*, it is a sufficient Cause to bring an Action; and they held a Dyer to be such a Trade, that for such Words he may well maintain an Action.—Here the express Allegation of buying and selling was evidently the principal Ground of Decision, and there is no direct Opinion that a Dyer, merely as such, might be made a Bankrupt; and if there had, the Case would fall within the Observation of Lord Loughborough, in Parker and Wells,

* In Green's Bankrupt Law, (a Work which has fallen into undeserved Neglect) it is observed, p. 19, "that though many Commissions have issued against Dyers, they do not seem subject to the Bankrupt Laws, for the very same Reason that Working Carpenters and Working Tailors are not, because they do not get their Living by buying and selling," &c.

upon another Decision in an Action for Words, that the Question did not come on in a Way to have the Point very accurately considered. The Doubts which were entertained as to declaring a Bleacher a Bankrupt, occasioned a Case to be laid before one of the Gentlemen who had written on Bankrupt Law, and from a Description of the Mode of conducting the Trade, he expressed his Opinion that a Bleacher was not more subject to the Bankrupt Laws, than a Washerwoman; but some Shreds and Patches of incidental Trading were afterwards discovered, upon which the Commission was proceeded in.

I think, Sir, you will agree that the present State of Commerce requires a more comprehensive Description to be given to the Persons upon whom this System of Law shall operate—and I prefer submitting the Adoption of the particular Expression; which shall be adequate for that Purpose, as a Matter for your Consideration to proposing any of my own; but I think the Subject may be materially assisted, but turning our View once more towards Scotland, and extracting from the Statute of 33d Geo. 3d the Description of "every Merchant or Trader in "gross, or by retail, as a Banker, Broker, or Underwriter; "or a Manufacturer, Artificer, or Mechanic, and in general "any Person who either for himself, or as Agent or Factor "for others, seeks his Living by buying and selling, or by the "Workmanship of Goods or Commodities, or by any other of "the foregoing Occupations, or holds a Share in such Under-"taking, (except Holders of particular Stocks, common La-"bourers, or Workmen for Hire, Land-holders, and Tenants "of Land, or Husbandmen)" and that it may be desirable to make a further Enumeration of Persons who, from their Avocations, are often placed in a Situation to which it is desirable that the Bankrupt Laws should be applied fairly and directly, rather than in that indirect and circuitous Manner which I have alluded to.

If the Principle should be at all admitted, that a Bankruptcy might take Place by a voluntary Cession, with the Assent of Creditors, it might reasonably follow, that at least in such Case, the Operation of the Law might be general, without being limited to Classes or Descriptions, although in the Case of compulsory Proceedings, it might be more confined.

ACTS OF BANKRUPTCY

IV. 1. The next Object that presents itself to our Attention, is the Description of Acts of Bankruptcy. Of the ancient List, the Articles of taking Sanctuary, obtaining Protection, and presenting Petitions to the King or Parliament, will of Course be expunged as inapplicable to the present Jurisprudence of the Country. There are only two of the remaining Classes which appear to me at present to require particular Observation —the beginning to keep House, and the making a fraudulent

A—Beginning to keep House.

Grant or Conveyance of Lands or Goods. The first of these is a quaint Expression, and which has produced a good deal of diversity of Opinion as to its proper Application, but in Practice it has been very much confined to the Case of a Person directing himself to be denied, and being actually denied to a Creditor.* I have lately known it decided, that a Person committed an Act of Bankruptcy, by omitting to go from his Dwelling-House to the Place of his Business, for the Purpose of avoiding Creditors who might call there, although he might have been met with without Difficulty at his House; but I much doubt whether that Doctrine would be generally admitted; and think it would be very advisable that the Cases which fall within this Division should be more distinctly and specifically defined; and as no actual defrauding or delay of Creditors is requisite in the Case of a Departure from the Dwelling House, the keeping House with intent to defraud or delay, should be deemed sufficient.—And certainly, when the extensive Consequence of a Commission of Bankrupt are taken into Consideration, and the very loose and indistinct Evidence upon which the Validity of it is to depend, in the most frequent instance of its Application, is also adverted to, it is impossible to pay too much Attention to the establishing as certain and accurate a Criterion as the nature of the Subject will admit. Every Body at all conversant with the Practice of the Bankrupt Law, must be satisfied that the Denial to a Creditor is often the Effect of an actual Arrangement for the Purpose of a Commission, although the Intent does not appear specifically in Evidence.

2—Assignment.

2. The other Act of Bankruptcy to which I have alluded, is a fraudulent Grant or Assignment; and the Persons denoted by the Statute with Reference to this Subject, are those "who shall make any fraudulent Grant or Conveyance of "their Lands, Tenements, Goods or Chattels, to the Intent "or whereby their Creditors shall or may be defrauded or "delayed for the Recovery of their just and true Debts."†—In the Exposition which has been given to these words, we cannot but observe, that the Doctrine that has been applied to them, has been in a great Measure occasioned by that Latitude and Ambiguity of Expression which is one of the principal Inconveniences in Language, and which is most particularly so when affecting Subjects of Jurisprudence.—The terms *fraud* and *fraudulent*, are among those which are used sometimes in a more confined, and sometimes in a more extended Signification.—Their natural and most usual Signification is that which is more confined, and which imports a certain degree of criminal

[* A more enlarged Construction has been made of the Words creating this Act of Bankruptcy in subsequent Cases, see St. 1 James 1, Ch. 15, Note (3) ante p. 30.]

[† See Stat. 1 James 1, c. 15, Note (7) ante p. 34.]

Intention: and adverting to the original Spirit of the Bankrupt Laws, I think it most probable that that was the Signification which was contemplated by the Persons who framed them. But the Inconveniences which may arise from allowing one Person to retain the Possession and apparent Ownership of moveable Property, while another has the actual Dominion over it, has rendered it expedient, that in many Cases, so far as regards the Rights and Claims of third Parties, the Ownership should be considered as attached to the Possession, especially where they have been originally united, and are afterwards severed; and therefore that any Disposition that would be attended with a contrary Effect, should be deemed invalid; but unfortunately that Invalidity is denoted by the term *fraudulent*, which thus acquires its most large and extended Signification; a Signification which is certainly of a technical nature, and very remote from the common Use and Acceptation of the Term. If I am correct in my Idea of the original Object of the Bankrupt Law, and of the Import of the Term as it is there applied, there has been a Perversion of the Law, by construing in the one Sense an Expression which was only intended to be used in the other.

3. There are three Cases which are connected with those Reflections. 1. An Assignment of Personal Property; the Person making the Assignment afterwards continuing in Possession. 2. The Assignment of all a Person's Property, by Way of Security to a particular Individual. 3. An Assignment of the whole Property, for the general Benefit of Creditors. I certainly think it very wise and desirable, that the Claims of those who may have been induced to afford Credit by the ostensible Possession, should not be frustrated by a secret Ownership, of which no idea could be reasonably entertained; and that any Claim in Opposition to the legal Process that would attach upon the apparent Ownership, should be discountenanced (except in those Cases where there may be adequate Reasons upon the whole View of the Subject for the Contrary, which it would be foreign from the present Purpose more particularly to advert to)—I doubt, however, whether the metaphorical Rule which has been laid down upon the Subject in Edwards and Harben, that in Case of an Assignment of Personal Property, the Possession must *accompany and follow* the Deed, has not, especially as it had been understood in its subsequent Construction, carried the Matter rather too far*—for where the Object of the contracting Parties can be equally accomplished without Detriment or Inconvenience to others, there is nothing unreasonable in allowing the Party, who, as between themselves is entitled to claim the Disposition of the Property, to permit the

[* See Note at the End of the Statutes of fraudulent Conveyances, P. II. Cl. VII.]

other to have the temporary Enjoyment of it without Prejudice to his Right, and without introducing a collateral and incidental Consequence in Favour of others. Whenever, therefore, the Possession is taken in mere Pursuance and Execution of the original Instrument, without the Intervention of any Claim or Interest in other Persons, and at a Period when the whole Transaction, if entire, would be valid and effectual; the Reasons for rendering the Disposition invalid, cannot fairly be applied; and if the Words *accompany* and *follow*, are to be used as denoting the Circumstances which shall give Validity to the Transaction, those Words in all Fairness might be sufficiently satisfied by such a Case as I have supposed without considering them as denoting an absolute Unity of Time. The Servant may be considered as accompanying and following his Master to London for the Winter, according to reasonable Intendment, though he goes a few Days after him in the Stage Coach; provided the Subject of Conversation is the Accommodation which the Master may derive from the Servant when he is in London, and not the particular Mode of Travelling, in Order to get there. But I am aware I am travelling a little out of my Subject, which consists in enquiring, not what kind of Possession shall be sufficient to render an Assignment valid, but whether, upon a fair Construction of the Statute of James, an Assignment which is invalid, for want of being sufficiently accompanied by Possession, shall therefore amount to an Act of Bankruptcy, as fraudulent. That this shall not be generally and invariably the Case, must, I think, be evident, because the taking the Possession is the Act of the Party to whom the Assignment is made, and any Neglect of his, cannot render an Act in the other Party, in itself innocent and unobjectionable, fraudulent and improper. From the Circumstance of not taking Possession, an Inference, that it was not intended to be taking, may be drawn, as Matter of Evidence; but I am here speaking not of the Evidence as to the Fact, but of the Consequence in Point of Law, and supposing it to be found as a mere Fact upon a special Verdict, that the Assignee did not take Possession, in which View of the Case there would be no room for carrying the Matter farther by Inference and Presumption; and if the Court should direct another Trial, considering the Verdict as too uncertain, it is only taking one Step more to get to special Verdict, in which any such Intention of the Assignor is expressly negatived, which for the Purpose of negativing the absolute Universality of the Proposition supposed will do just as well.

4 But I should leave my Views of the Matter very short indeed by stopping here—as I wish to apply the Enquiry to the broad and complete Case, that after an Assignment, the Property is left by full Assent of both Parties, in the Posses-

sion of the Assignor, so as to be completely subject to every Execution or Disposition in Favour of third Persons, as if it was his own, but that the Assignee should have the Liberty of claiming it as against the Assignor; and this, Sir, is the Case to which I conceive there is a Perversion of Terms in applying the Attribute of *fraudulent* as used in the Statute referred to.—Now Sir, before we dwell too much upon words, it may not be amiss to reflect a Moment upon the Nature of the Thing, and enquire whether there is any Thing criminal, any Thing immoral, any Thing repugnant to public Policy, in admitting a Person to give another an Interest in his Property in such a Manner as shall be valid and obligatory, so far as affects the Parties themselves, but inoperative as it may interfere with the Claims and Interests of Others.—If the Act does come within any of these Descriptions, I shall not offer to argue in support of it—but certainly I have never been able to bring my Mind to a Conclusion that it does so.—But when we come to haggle upon Words the Subject takes a different Aspect—and is almost reduced to a Syllogism by Lord Mansfield, in Devon and Watts. (Doug. 92)—" But it may have been said to be void against Creditors, and that the Goods might still be taken in Execution under the Statute of Eliz.—If it was so it was fraudulent, and therefore an Act of Bankruptcy under the Statute of James;" but the great Fallacy of Syllogysms consists in composing them of Propositions, in which the Words are the same, but the meaning is different,* and whether the Word fraudulent was or was not intended to have the same identical Signification in the Statute of James, as in the preceding Statute of Elizabeth, is a Matter not to be assumed as granted, but the very Question in Dispute; and with Respect to which I have endeavoured to point out what has uniformly appeared to me a fair and necessary Distinction—and whether I am successful or not in supporting a Distinction with Respect to the Word as a Matter of judicial Construction, I shall have sufficiently obtained the Object of my Observation if I establish a Difference in the Principle of the Things as a Matter of legislative Policy.—That the actual Intention of defrauding Creditors, such as must subsist to support an Act of Bankruptcy, by departing from the Dwelling-House, and that which necessarily accompanies a mere Assignment subject to no other Imputation than an Invalidity against third Persons, *for want of* carrying it into immediate Possession, are in their nature not only distinguishable, but specifically distinct, is sufficiently obvious—whether the same Effects shall result from one as from the other, is a Matter of important Consideration with which I do not at present interfere; those who are more competent to decide upon

* I remember an Observation of Dr. Cogan upon some Instance of this kind in Hume, " that it is such Stuff as Conundrums are made of."

that Point may, however, not be displeased with my dwelling so long upon the Enquiry, since, if the Effect does follow after such an Examination, it will result from a distinct and separate Judgment upon the Things themselves, and not from confusing them together in Consequence of an identity of Name.

5. The Assignment of all a Trader's Effects by Way of Security, is a Subject so analogous to that which I have already adverted to, that it will not be necessary for me to dwell upon it with much Particularity.—The Effect of such an Assignment divested of any Incumbrance from the Words by which it may be described, is, that it enables the Assignee to satisfy the Claim intended to be secured, by taking Possession of the whole or any Part of the Property assigned, subject to the Obligation of accounting for any Surplus after discharging the Security. But the legal Observation upon all this (Devon v. Watts) is, that such an Assignment "destroys the Capacity "of trading; that the Party cannot fairly sell an Ounce of "his Property after the Assignment. It is a Fraud to deal "with any other Trader, every other Creditor is defrauded;" and the Adequacy of the Property to satisfy the Security or even its Excess to the greatest Amount is quite immaterial. Actual Fraud, as resulting from any real Intention to injure other Creditors, is, by the Supposition of the Argument, placed entirely out of the Question—of whatever has that Quality, I am in no Shape the Advocate; and, as I before observed, I am not agitating a Question of particular Evidence. Now, the View which I have just extracted, appears to be very far from conformable to the real Nature of the Thing: it seems to point to a physical or at least a moral Impossibility of continuing to trade any longer. Whereas, in other Words, the actual Effect which, as I have already mentioned, is only to compel the Debtor to convert into Money so much of his Property as will satisfy the Debt secured, or to enable the Creditor to do it in Case of his Neglect or Refusal, and when the Creditor does take Possession, he becomes a Debtor for the Surplus, and the Sum for which he is so indebted, is a Property; but a Property in another Shape, which remains as a Fund for the Satisfaction of other Claims. If he does not take Possession, the Property, so far as the Interest of third Persons is concerned, is precisely subject to the same Operation of the Law, as if no Assignment had been made.

All the Effect of such an Assignment, as to visible, tangible Property, is equally produced by a Warrant of Attorney to confess Judgment; and, in many Cases, there is no other Property upon which an Assignment can operate; (and, if I may be admitted, now and then, to start an incidental Topic, I conceive it would not be any Blemish in the Law, if Debts

and funded Property were subject to Execution upon Judgments). If the Words of a Deed are, "I authorise John Doe to confess Judgment to Richard Roe," Richard Roe may fairly sweep off all the Effects, and there is no Harm done—but if it says, "I John Doe do assign all my Effects to Richard Roe," though not a single Article has been taken in Consequence, it is Fraud and Bankruptcy, which certainly is no very pointed Illustration of the old Maxim—Lex plus laudatur quando ratione probatur.

Here, Sir, as in the preceding Instance, all that I endeavour is to point out clearly the real Nature of the Subject. I conceive that the Law, as at present established, is founded upon false and erroneous Reasoning—Whether, in whatever Manner it became the Law, it is more desirable for the Interest of the Public, that it should continue so, than that it should be altered, is a Point which I submit, with unaffected Deference to your superior Experience, and more mature Consideration. The only Result, for which I am anxious, is, that it shall not be slurred over, with the Wisdom of the Legislature, and the Wisdom of our Ancestors, without any Consideration at all.

6. I have now to consider the third Case to which I have above alluded—a general Assignment for the equal Benefit of Creditors; and from what I have already said, you may easily infer my Opinion with Respect to the Propriety of bringing such an Assignment within the general Scope of the Bankrupt Law. This Doctrine, I believe, also owes it Parentage to Lord Mansfield—(a Name which I shall ever regard with Respect, although I think it has sanctioned many Deviations from the Course of judicial Propriety). "No Trader can do "an Act of Fraud contrary to the Spirit of the Bankrupt "Laws, and to the Injury of his Creditors. He cannot assign "his Effects to all his other Creditors, in Exclusion of one "whom he considers dishonest or unjust; nor even to be "equally divided amongst his other Creditors, because he "cannot take his Estate out of that Management which the "Law puts it into." Harman v. Fisher, Cowp. 117—"the Spirit of the Bankrupt Laws" is an Expression which, if it means any Thing more than their legal Operation, I am not prepared to comment upon; but as to the "because he cannot "take his Estate out of that Management which the Law puts "it into,"—I think it certainly is very correct Doctrine to say that a Trader cannot take his Estate out of that Management which the Law puts it into; but I cannot equally agree that this Maxim decides a great deal as to the Point in Question—for like many other Arguments, it takes for granted a great deal more than is either admitted or proved. The Law does not invariably and indiscriminately put the Estate of an insolvent or embarrassed Person under any particular Management: it

only does so in the Case of that Person having committed one of the Acts which are enumerated in the Statutes as Acts of Bankruptcy; and if instead of making an Assignment by Deed, in Trust, to sell and dispose, &c. &c. he converts the whole into Cash, and calling his Creditors together, offers to give each of them a proportionable Part, I believe no very fraudulent Motive will be imputed to his Conduct for so doing, neither would there be any great Consideration for the Interest of his Creditors, in deducting from the general Fund the Expense of a Commission of Bankruptcy (all adventitious Circumstances being in this Case as they must be in all Cases of general reasoning, considered as out of the Question); and even if he confined his offer to a Distribution among those who, upon Receipt of that Property which, to use the Language of many Cases, *is his all*, (upon which however, I will trouble you with a Word or two by and bye) would consent to his Liberation, I do not think it would very much vary the Question. If he has in any other Respect committed an Act of Bankruptcy, his Assignment cannot withdraw his Estate from the Operation of the Commission, which it would otherwise be subject to. But to talk of withdrawing his Estate from the Management which the Law puts it into, when under the existing Circumstances, the Law, does not without something further, put it into any Management at all, is an Argument that evidently will not stand the Test of Examination.*

It affords me some Gratification, Sir, that in taking up Mr. Montague's Digest, for the Purpose of an Index, to guide me to the Passage which I have referred to, I find my own Opinion pretty strongly supported by two Queries, which evidently point at the same Conclusion. The Queries, however, I think it very desirable to extract, in the Shape in which I find them:—Q. 1. "Is it just that an insolvent Trader should give up the Wreck of his Property to his Creditors, and if it be just, can such Distribution be a Crime?"—Q. 2. "Can the Distribution of the Wreck of insolvent Trader's Property in the same Proportions, with more Expedition and at less Expence, than it would be distributed under a Commission of Bankruptcy, be a Fraud on the Bankrupt Laws, or be fraudulent, with Intent to defraud Creditors, merely because the Persons who make the Distribution are different?"

7. So far as the Interest of the Public is concerned, I conceive that considerable Utility might result from giving such Assignments as I have last referred to, an express Sanction, by admitting the Assignees to stand in the Character of Representatives to the Assignor, as extensively as the Assignees of Bankrupts, provided proper Regulations were made to prevent the fraudu-

[* See the Observations of Lord Eldon in ex-parte Bourne, 16 Ves. 148.]

lent and improper Application of such a System; and especially for rendering the Meeting of the Creditors for the Purpose of such an Arrangement, a Matter of sufficient Notoriety; but I do not think it necessary to dwell upon this Idea, or upon the Modification which would be requisite, if it were carried into Execution, as I conceive that any Proposal for the Purpose would be clearly unsuccessful, on Account of its interfering with many official Advantages.

8. But, Sir, though it may appear rather inconsistent that after stating my Objections to the construing these Assignments to be Acts of Bankruptcy, I should begin to quarrel with tho Great Seal for limiting and restraining a Rule which I have contended to be founded in Error; I am notwithstanding induced to make that the next Topic of my Observations; an Assignment of all a Trader's Effects for the Benefit of his Creditors, is now established (Right or Wrong) to be Act of Bankruptcy—but has lately been called a Lancashire Act of Bankruptcy.—The Sum and Substance of what I can collect by Rumours and Conversations upon the Subject is this, that if from examining the Assignment it does not appear to have been executed by many Creditors, and an Inference can be drawn, that the Object and Intention of it was not to be executed as an Assignment, but to be introduced on the Proceedings as an Act of Bankruptcy—it shall not be an Act of Bankruptcy, but a Piece of waste Paper—what I have to observe upon this Subject, Sir, connects itself naturally with what I had proposed as a subsequent Head of Enquiry, the Jurisdiction of the Great Seal, and I shall venture, with some little Violation of Arrangement, to enlarge at present rather more upon that general Subject than my immediate Topic would require.—Whether an Assignment upon the Face of it does or does not contain those Circumstances which in Construction of Law have been held to constitute an Act of Bankruptcy, is a Question upon which every Member of the Profession of the Law ought to be able to form an Opinion, but whether the incidental Circumstances are such as would support the Accusation of issuing a friendly Commission, is a Matter which it may puzzle the most experienced Practicers to discover—no Rules, no Data, no Criteria are given to direct the Judgment—the Statute Law furnishes nothing which can afford the least Assistance upon the Subject, and the Commissioners are perfectly at a Loss as to the Manner of regulating their Conduct. This, Sir, is a Difficulty which, if I am correct in my original Supposition of your Intention to offer a general legislative System, I trust will be effectually removed.*

OF DILATORY PLEAS, &c.

V. Having completed every Thing which I have to say as to the Acts of Bankruptcy, which are recognised under the

[* See Section VII. and Notes ad finem.]

present System, there are a few other Subjects which I will beg leave to point out to your Attention, without offering any very specific Suggestions respecting them. Sham Pleas, Writs of Error, and Injunctions for Delay, Defences which put a Plaintiff to the Expence of proving his Debt at an Assizes, for the Purpose of afterwards proving it with its Costs under a Commission of Bankrupt, are very common Instruments of Knavery. I submit to your Judgment, whether any Regulations can be adopted in Relation to the Bankrupt Laws for counteracting them, without infringing the fair Rights of the Subject; and mention only, as a casual Idea, which may admit of further Examination, the framing some Provision, that Persons who have thus wantonly subjected their Creditors to an Accumulation of Expence, should not, as against the Claims of such Creditors for a Reimbursement of that Expence derive any Benefit from a Certificate, or the general insolvent Act, or any special Insolvent Act; but I barely hint the Principle without insisting upon its correctness, or adverting to its Modifications.

PETITIONING CREDITORS' DEBT.

VI. There is no Part of the general Subject of my Address upon which I have less to offer than the Petitioning Creditors' Debt. It may deserve Consideration whether, the allowing all the Debts which may at present be admitted in Proof, to be sufficient to support a Commission, would not, upon the whole, be a useful and proper Regulation; or if not the several Classes of Cases may be distinctly considered; for Instance, —1. Equitable Debts, for which there is no legal Remedy. 2. Debts due at a future Time, and not secured by writing. 3. Debts contracted after an Act of Bankruptcy. But finding that I shall in other Respects trespass considerably upon your Attention, I merely advert to these Topics without detaining you with the Discussion of them.

OF THE CREDITOR'S RIGHT TO A COMMISSION AND THE OBJECTION TO FRIENDLY COMMISSIONS.

VII. Having thus far, Sir, submitted to you some Observations which have occurred to me as material, with Respect to the Circumstances preliminary to issuing a Commission, I next proceed to the Act of issuing the Commission itself—with Respect to which I think it is very important to ascertain, by Legislative Provision, the Truth or Falsehood of a Position which we meet with in the very Outset of all the Treatises upon the Subject, viz. that where the Case is one which is subject to the Operation of the Bankrupt Law—the issuing of a Commission is a Matter not of Discretion, but of Right.

I have never seen this Proposition contradicted in Terms —but has it always been, is it generally acted upon in Practice according to its fair and genuine Principles? I conceive that it is not. That the issuing of a Commission is a Matter of Right, but that the Power of superseding it as soon as it is issued, is Matter of Discretion—if stated in broad and common Terms, would be admitted by every one to be puerile and

absurd; but I certainly have long been impressed with the Conviction that such a Doctrine, however absurd in the Statement, is so far from unprecedented, that it is perfectly familiar in Practice, and that this is one of the Inconveniences which with many important Advantages, have resulted from the Power which has been incidentally exercised by the Great Seal, in Consequence of the general Authority inferred to be derived from the Statutes of Bankruptcy.

I have already, more than once, adverted to the Prejudice by some Persons entertained against friendly Commissions of Bankruptcy; but in looking over the Law upon the Subject, as subsisting in the Statutes, I find nothing from which I can infer that a friendly Disposition in the Petitioning Ceditors, as to the incidental Consequences of a Commission in Respect of the Debtor, shall affect the Validity of the Commission itself. In general the Term *Right* imports what can be demanded and enforced, and what cannot, without injustice, be withheld, or consequently withdrawn—and in our usual Administration of Justice, when the Existence of the Right is once admitted, whatever Disapprobation may attend the Exercise of it, it is considered as a mere incidental Consequence that the Power of the Law shall, when implored, be exercised in its Support; and this for the strongest and most general Reasons of Public Policy and Public Justice, which will never allow the mischievous Consequences that would result from acknowledging the same Attribute as a Right, and conferring it as a Favour.

In our Courts of Law I am not aware of any Instance in which it has been held, that a Commission was in itself invalid, in Consequence of its being proved that the Motive which induced the Creditor to take it out, was the consequential Benefit which the Debtor would derive from the Certificate; and, without affirming that no such Instance has occurred, I may, without Fear of Contradiction, assert, that no such Principle is generally recognized and acted upon.. If it is admitted to me that that Principle is not adopted at Law, it is impossible for me to concede the Possibility of reconciling the two Propositions, that the Great Seal has upon the same Ground any Power to interpose the Authority of superseding the Commission which it has issued, and that at the same Time the established Doctrine, that a Commission is Matter of Right, retains a practical Existence.—When I refer to the Power of the Great Seal, I, of Course, refer to such Power as is governed by, and consistent with the Law; and I apprehend that those whose Notions of judicial Power are the most extensive as to its particular Application, would be the most willing to disclaim any other Interpretation of the Term; and the last to insist that, because the Power, when executed, could not be controuled by any superior or appellate Jurisdiction, it should, therefore, be

considered as a Power acknowledged by the Law. The House of Lords would disclaim the Power to rescind the most oppressive Will, which was supported by the regular Principles of Law, in Favour of the most meritorious Heir that has existed, and would, *una voce*, acknowledge that the Exercise of such a Power should be treated as impossible. I am sure that all who have been invested with the highest judicial Station of the Country, for a long series of Years, would revolt against the Admission of an opposite Principle, thus fairly and nakedly stated. I conceive, however, that so important a Subject has not been always duly considered and reflected upon; and that many Instances have occurred, in which the conclusive Authority of a Decision, in Respect to its immediate Effect, has prevailed over the regular Application of those Principles, which would have been applied in Courts having a co-ordinate Authority, to decide upon the Existence, or Non-existence of that state of Facts, which, when existing, induces the Consequence of legal Right, as contrasted with judicial Discretion.

Whenever the general System becomes the Subject of legislative Consideration, I hope that the Question will be met in a fair and manly Manner, that it will not be allowed to rest upon vague and indefinite Expressions, but that a direct and open Choice will be made, pointing to the right Hand or the left, that the Right will be distinctly acknowledged, or the discretionary Power distinctly avowed.*

I remember having read an Intimation that it would be desirable to enact, that any Person taking out a Commission of Bankrupt, should make an Affidavit that he believed that such Commission would be for the general Benefit of the Creditors. Without enlarging upon the Impolicy of multiplying Affidavits

[* In ex-parte Lanchester, 17 Ves. 512, upon Petition to stay Proceedings under a Commission upon an Affidavit, denying the Petitioning Creditor's Debt, the Lord Chancellor said—"There is no Doubt that any Person striking a Docket and giving the Bond as required by the Act of Parliament, has a Right to take out a Commission, and to have the Adjudication of the trading, &c. proved, and there is no preventive Remedy." "The Act is positive that under particular Circumstances the L. C. shall issue a Commission, but if he arrests it before it is opened he really does not issue the Commission under the Act of Parliament." In ex-parte Browne, 1 Rose, 151, it appearing that the Commission against a solvent Person was taken out merely with a View to get rid of a Partnership, the L. C. said, "I can never agree that a Man shall take out a Commission, not as a Commission, but as the Means to carry into Effect an Intention that has Nothing on Earth to do with it—and the Commission was superseded with Costs—In ex-parte Harcourt, 2 Rose, 203, the L. C. being of Opinion that a Commission had been taken out contrary to good Faith, he held it to be supersedable upon the Ground that the Commission looking at it as a species of Execution, of which the Court would regulate the Abuse, had in Contravention of good Faith been resorted to, upon the Principle of Controul over the Abuse of those Proceedings, which all Courts entertain—see Note at the End of this Section.]

in common Form, as to matter of Belief and Opinion, and upon which it would be next to impossible to maintain an Indictment for Perjury, it is evident that the requiring such an Affidavit, would directly militate against that doctrine of Right which I have already adverted to as forming an established and acknowledged Principle of the Law.—The Right results from the Subsistence of the Debt, and the Facts which constitute a Case of Bankruptcy; the Relief which other Creditors derive from the particular Exercise of that Right, is an incidental Consequence, but neither in this, or any other Exercise of Right, is a Party to be required to act upon any other Interests or Objects than his own. So far as he interferes with the actual Rights of others, he is met by the Obstruction of the Law, but as soon as he is controuled in the Exercise of his own, they cease to be intitled to the Name which is applied to them.

I have also seen an Account in Print, of great Indignation been expressed with Respect to a Case where a Person owed a considerable Sum of Money in the whole, but not so much as £100 to any one Creditor, except his Brother, and the Brother threatened, if the Creditors would not accede to a Composition, to take out a Commission, which would swallow up the Property; and the Case was echoed from Paper to Paper, as something extremely horrid and alarming; but as it did not quite make that Impression upon my own Mind, either at first, or in any subsequent Consideration of it (and my Consideration of it has not been unfrequent) I think it may not be amiss to analize the Case in its different Bearings. I am not certain whether the Brother offered to relinquish his own Debt, but for the Sake of placing my Ideas upon the Subject in a clearer Point of View, I will consider the Case upon the different Suppositions that he did, and that he did not. The Brother's Debt being therefore supposed to be £100, the Debts of the other Creditors should be taken at something less than £200, as otherwise they might themselves have taken out the Commission, (and I have known an Instance of a Commission in the Petition for which it was necessary to include several Debts under £5, and to prove them in an Action), but they may be taken at £200, consisting of five Creditors of £20, who consequently have a Voice in the Certificate; and twenty Creditors of £5 each, the Effects may amount to £100, and would pay a Composition of 6s. 8d. in the Pound, if the Brother's Debt is included; and 10s. if it is not; the smallest of which Dividends is more than upon an Average, is obtained in a Case of Bankruptcy. If the Brother takes out the Commission without saying any Thing of his Reason or Motive; or what is the same Thing in the present Argument—If the Commission is taken out by any Creditor, without any Reason or Motive, which can be the Subject of Animadversion, the Expence may

be considered as amounting to, at the most moderate Estimate, £50; but may be taken more probably at £75; consequently, in the first Case, £50; in the second, £25, is left to be divided among the Creditors—i. e. in the first Case, 3s. 4d. in the second, 1s. 8d. in the Pound, and Nobody can gainsay what has been done. But suppose no Commission has been taken out, the Creditors cannot all obtain Payment, and they must scramble for it; they are all too much upon the Watch to let one be preferred to another, and there are twenty-five Actions. Undefended Actions for the Sake of Delay, occupy, I think, about one Half the Cause Paper at Lancaster Assizes. Let it be supposed that one Half, excepting the odd Number are defended, and the others not. The first may be co costing upon an Average £30; the others £15; the f sequently, will cost £360; the others £225; in the whole, £585. The £100 in the mean Time, is gone in Subsistence and Defences, or in Payment of the Brother; and the Course which is pursued produces, instead of a greater Satisfaction, an absolute Loss of the Expence. So that the Composition would produce, upon the Supposition of the Brother's Debt not being relinquished, double (or quadruple, according to the Expence of the Bankruptcy) the Receipts upon the Commission: the Commission would produce some Dividends—the Law-Suits are absolute Loss—and diminish or vary the Figures as we will, for the Sake of meeting the Probabilities of the Case, they cannot be so varied with any real Probability, as to turn the Course of the Argument, and to shew that to the Creditors at large, any other Choice could have been so advantageous, as accepting the Brother's Proposal. I have not all this Time forgot the Power of keeping the Debtor in Gaol, the *Capias ad Satisfaciendum*; but the Brother's Commission cannot prevent that. I have given the Bankrupt five other Creditors of £20, and four of them must assent to the Certificate before this Satifaction can be debarred. The Sum of the Argument is this:—The Brother, by taking out the Commission, does no more than he has a Right to do. By declaring his Intention to take out the Commission, unless the Creditors will accept of an amicable Distribution of the Effects, he places the Creditors in a better Situation than they can be upon any other Arrangement, unless their Resistance occasions collateral Aid, the Presumption of which cannot be legitimately taken into Consideration.

A former Part of my Address would, perhaps, have accorded more aptly than the present, with my alluding to d Kenyon's Decision, as reported in Espinasse, that the executing an Assignment for the Purpose of taking out a Commission, would not render the Commission void. This has, I believe, been repeatedly contradicted by the Lord

Chancellor, and so far as the Nature of the Authorities is to be taken into Consideration, I certainly admit the latter to be much the more considerable, and cannot too strongly express my Regret, at observing Decisions at Nisi Prius (necessarily pronounced upon the impulse of the Moment, without an adequate Opportunity of considering the Subject in all its Bearings and Relations, and often amidst the distractions of a Multiplicity of other Business) acquire so great an Influence and Importance, as is too frequently ascribed to them: so much so, as upon a memorable Occasion to be deemed a principal Ground of Argument, even in the Legislature itself. But it is probable that a greater Attention may be due to a Passage in Douglas's Reports, where we find an Opinion of Lord Mansfield in Court, long before the Decision in Espinasse, which shews at least, that the Doctrine against amicable Commissions was not at that Time generally acknowledged. "The Assignment was a Fraud upon the Bankrupt Law. The Bankrupt was advised and agreed to have a Commission sued out, and after that made the Assignment. It was said the Creditors were told of the Assignment. The Manner in which they were told of it was the worst Part of the Case, for the Bankrupt concealed from them where or how it was made. All amicable Commissions are agreed to on the Ground, that there is to be no Preference." Doug. 88.*

(* In Tappenden v. Burgess, 4 East, 230, a Commission was held valid—founded upon an Assignment, although it was objected that the Creditors in general who procured the Deed, had at the Instant, resolved to make it an Act of Bankruptcy. In ex-parte Duhene, 1 Rose, 335, Lord Eldon said, that although a Commission is taken out in a concerted Act of Bankruptcy, on the Oath of a Person who states his Belief of an Act having been committed, but who has no Knowledge of any Act but the concerted one, yet if Acts can be proved subsequently committed, and of which the Petitioners could possibly have had no Knowledge, it has been the constant Course in Law to sustain the Commission, and without an Instance of an Application to supersede it. In ex-parte Davies, 1 Rose, 298, The Lord Chancellor said, although Creditors is entitled to a Commission of Bankrupt as Matter of Right, yet it must be the Commission of the Creditor and not of the Bankrupt, and although the Act of Bankruptcy may not have been concerted, yet if the Commission is clearly the Commission of the Bankrupt, and he evidently has the Management and Direction of it, the Court will not hesitate instantly to supersede it.—In ex-parte Goothwaite, 1 R 87, one Robertson in concert with the Bankrupt, and in Order to defeat an Execution, induced the Petitioning Creditor to call upon the Bankrupt, upon which the Creditors took out the Commission and carried it on hostilely. A Petition to supersede the Commission, was resisted on an Affidavit of Lyon, (the Creditor) stating that he had called on the Bankrupt in Consequence of his Appointment with Robertson, and had no Idea that he would have been denied, and it was urged that even if the Act of Bankruptcy had been concerted, it was not a friendly Commission, but had been conducted bona fide and not in Collusion. The Lord Chancellor said, "Without Doubt a Commission may be taken out to defeat an Execution, but that it must

OF THE AUTHORITY OF THE GREAT SEAL IN CASES OF BANKRUPTCY.

VIII. I fear, Sir, that I shall not escape the Charge of Presumption, in now calling your Attention to a higher Object, and submitting to you some Observations on the general Authority of the GREAT SEAL. To every Person who compares the very few Provisions in the Statute Book respecting this extensive Jurisdiction, with the numerous Cases in the Books of Reports upon the Exercise of it; who compares the Terms in which the Authority is given, with the Extent to which it is carried, it must be an obvious Remark, that never, upon so narrow a Basis, was there erected so large a Superstructure of Authority undefined, exclusive, and without Appeal.

I am far from contending that, in the general Application of this Authority, the Advantage of the Public has not been very essentially promoted; but, when the Subject comes to be reviewed and systematized on a general Scale, I cannot but entertain the Opinion, that the Course and Limits of such Authority would be more beneficially regulated by legislative Provision, than by judicial Discretion, especially by that Discretion, which, being free from the usual Checks upon the Misapplication of judicial Authority, is therefore, in its very Nature, peculiarly subject to the Operation of individual Temper, Prejudice, and (if I may go farther without trespassing upon the Rules of Propriety) Caprice.

I therefore should be particularly gratified in any Reformation of the Law, to see the Nature, the Objects, and the Limits of this Jurisdiction, defined with a Precision and Accuracy at least equal to that of any other Part of the System. In any prevalent or accidental Abuses elsewhere, the Remedy is at Hand: in any Misconception here, as the Law is at present constituted, a Remedy is unknown.

I have already adverted to the Distinction between the Right of the Party, and the Discretion of the Court, as it affects the particular Subject of issuing the Commission; and the same Distinction is equally important in every other Part of the System. I entertain considerable Doubts, whether it has always been sufficiently attended to in Practice; and without intending to dwell upon particular Instances, shall allude gene-

not be the Commission of the Bankrupt. It would be too much to say this is not a concerted Act: it is hard upon Lyon, but the Commission must be superseded, and with Costs.—This Case seems to go very greatly beyond any other in respect either of the Circumstances or the Principle, and the superseding the Commission, and fixing the Petitioning Creditor with Costs, merely on account of the Motive to which the Creditor was not privy in committing the Act of Bankruptcy, appears to be not merely a Case of Hardship, but one which could require very serious Revision before it was finally admitted as an Authority. See the several other Cases referred to in ex-parte Bimmer, 1 Mad. 250, in which the Vice Chancellor superseded a Commission on account of Collusion between the Bankrupt and Petitioning Creditor.]

rally to Cases in which it has been decided, that Persons whose Conduct has in some Respects excited Disapprobation, shall not be allowed to exercise those Rights which the legislative Power has expressly given, and which it is therefore beyond the legitimate Province of judicial Authority to restrain. The Power has, perhaps, not been improperly exercised provided it is admitted to exist; and it may be very desirable in many Instances expressly to confer it; but the Assumption of a judicial Power to controul what is legally recognized as an absolute Right, is a Principle than which none can be more dangerous in Respect to the Consequences that must naturally result from its general Adoption.*

I apprehend that the fair and legitimate Limits of administering the Bankrupt Law cannot be extended further than the Adjustment of those Claims which immediately result from, and are dependent upon the Bankruptcy itself; and that these Limits have been transgressed whenever a Power has been assumed of deciding controverted Questions between the Estate that is under the Direction of the Court, and third Persons standing in Situations adverse to the Bankrupt, and consequently to his Property.†

[* In the Second Volume of Mr. Christian's Bankrupt Laws, p. 212—226, there is a learned Dissertation upon the Nature and Origin of the Lord Chancellor's Jurisdiction in Cases of Bankruptcy, which he refers to the mere Influence of Recommendation and Advice—and the indirect Controul which the Lord Chancellor has over the Commissioners by means of his Patronage and his Power of refusing to insert their Names in other Commissions, and which therefore is inferred to be and is designated as a recommendatory Jurisdiction, as distinguished from the mandatory Jurisdiction expressly given by Statute. But although this View of the Subject may in some degree account for the Origin of the Powers at present exercised, it can by no means be regarded as a Description of their actual exercise, in which there is the same Language of Authority, and the same compulsive Judicature, as in any other Proceeding of the Law. A considerable Part of the Authority, as well as of the present Jurisdiction, exercised by Courts of Equity in a Variety of Subjects, is certainly to be traced to the Principle that every Court is conclusively the Judge of its own Contempt, and therefore, when any Authority is assumed, and the Disobedience of it is treated as Matter of Contempt, the Consequence is an indirect Power of Legislation which no other Tribunal is competent to controul. It is very fortunate that a Principle which in its Nature is so very susceptible of Abuse, has been in general applied to beneficial Purposes. In some Part of Mr. Christian's Discussion he seems to treat the Place of a Commissioner as one which is known to the Law, whereas each Commission is a particular Authority and Delegation; and the Appointment of particular Lists in the Metropolis, is a mere Arrangement arising from the personal Acts of those who have held the Great Seal, and the number of Lists may be extended or diminished at Pleasure. A new List was added by the Lords Commissioners in 1792.]

[† In ex-parte Hall, 1 Rose, 15, the Petition was that the Petitioner might be declared to be entitled to certain Bills, and might be permitted to use the Name of the Bankrupt or Assignees in bringing Actions against the Acceptors, or that the Bankrupt or his Assignees,

The Lord Chancellor has observed, that it is an established

or both of them, if necessary, might be decided to indorse the Bills. The Counsel, in support of the Commissions, referred to ex parte Dumas, 2 Ves 386, 1 Atk 232, ex-parte Oursell, Ambler, 378, (but these Cases do not relate to the Question of Jurisdiction). The Lord Chancellor said, "Whatever may have been the Practice in Lord Hardwicke's Time, it has been admitted for these last twenty-five Years, that there is no such Jurisdiction in Bankruptcy, It has been the usual Practice to make the Objection and submit at once; and I am well aware how careful I ought to be in extending a Jurisdiction admitting no Appeal; I may interpose by Consent, and if Parties waiving the Benefit of the Objection afterwards should refuse Obedience to the Orders, I would commit them there are many Cases where the Court has Jurisdiction merely by Consent. This is not a Case where the Chancellor is making Order for the Distribution of the Bankrupt's Property among the Creditors, but as to others who are not bound to submit to the Jurisdiction Lord Thurlow would not have entertained Jurisdiction for a Moment In the next Case in the same Volume (ex parte Rawton, p 15), the Petition was for the delivery up of Short Bills in the Hands of the Bankers, on account of the Petitioners, and an Objection was made in Respect of an Extent that had issued upon the Bankrupts' Acceptances on the Petitioner's Account, which Extent the Crown consented to withdraw In the Course of the Discussion the L C asked if the Petitioners had proved, and being answered in the Negative, said, "Then what Jurisdiction have I between the Parties who have not come in under the Commission and the Assignees The Petition presents a Case in which I cannot interfere, it is merely asking the Court for its Opinion, I can make no Order but by Consent" In a subsequent Stage of the Case his Lordship said, that if the Assignees insisted on the Objection, he could not proceed; upon which Mr. Montague contended, that independent of the Consent of the Assignees, his Lordship was fully confident to decide, that the Chancellor's Jurisdiction extended to every Thing in Bankruptcy, that the Assignees did not dispute the Facts; that they were always amenable to his Jurisdiction and the Petitioners, who were the only Strangers, submitted to it His Lordship said, he should consider of what had fallen from Mr. Montague, and finally stated, that upon Consideration, he was satisfied that he had the Jurisdiction, "Any Thing that is necessary for me collaterally to decide, in Order to the Question of Proof will give me Jurisdiction; and as far as the Assignees are concerned they are under the Statutes already amenable" In a subsequent Case, ex parte Peirse 1 Rose, 212, (which was also a Petition for delivery of Short Bills) the L. C. after giving his Opinion upon the merits said "Then comes the Question, whether the Court in Bankruptcy has the Jurisdiction, &c., an Assignee cannot come here and call on a Person to appear here who claims Nothing under the Bankruptcy. I know no Instance where Assignees have brought a Person here claiming Nothing under the Commission, who they alledge has Money belonging to the Bankrupt in his Hands. The Chancellor says, bring your Action or file your Bill If in this Case the Petitioners had said there is a Cash Account on which £5,000 is due to us beyond all Question and there is also £10,000 Short Bills, and had petitioned for liberty to prove, the Chancellor must in that Case have decided indirectly, in whom the Property of the Bills lay; I have found many Cases where the Court has exercised Jurisdiction against Assignees If other Persons come in to avail themselves of the Jurisdiction, they must submit to it in all Respects, and the Court will enforce its Order against all In many Cases the Courts has assumed the Jurisdiction against Assignees not by Consent but as of Right belonging to it.

Practice, in Cases of the Bankruptcy of one Partner, for the Court to assume the Disposition of the Partnership Estate, but that he did not know how that originally came to be the Law, Barker v. Goodair, 11 Vesey, 78. In what particular Year, between what particular Parties, or before what particular Chancellor this Law was first introduced, are Points upon which I can no more pretend to have any Knowledge than his Lordship; but when the whole Authority upon a Subject is derived from subsisting Acts of Parliament, and there is Nothing in those Acts of Parliament from which a particular Authority can be reasonably inferred, there is no Difficulty in pronouncing, that the Exercise of such an Authority must have originated in Usurpation and Abuse: and there is no Subject upon which it is more within the Competence of the same Tribunal which first sanctioned the Abuse to abolish it; as there is no Subject in which the Reformation of an Abuse is less subject to the Risque of producing incidental Consequences, which may be more detrimental than its Continuance. The extended Jurisdiction which has been exercised in the Administration of the Bankrupt Law, has evidently arisen from the Acquiescence of Parties, in a less expensive Method of discussing the same Question before the same Individual, in one Capacity, rather than insisting upon the more regular, but more expensive Mode of discussing it before him in another; no Objection is formally taken, the Discussion proceeds upon its immediate Merits, without any Notice of the Irregularity and Incompetency of the Tribunal; and the Circumstance having taken place without Opposition or Observation, as a Matter of Convenience, becomes familiarized as a Matter of Course; and, when a Motive does arise for requiring the Jurisdiction to be confined to its proper Limits, and tracing the Error to its Source, a sufficient Answer is given to a Proposal for the Correction of the Abuse, by saying that it subsists.

OF THE APPOINTING A COURT OF BANKRUPTCY.

IX. But the Suggestion which I have next to submit to your Attention, is pointed to a more extensive legislative Provision than any which I have yet alluded to, and consists in the Creation of a new Tribunal, expressly appropriated to the Jurisdiction at present under Consideration—the first Step towards which, must be to avoid that Kind of Obstruction which might arise from its Interference with existing Interests.

That the Advantages, whether direct or incidental, attached to the highest Situation of legal Authority, are not more than fairly commensurate to the Importance of the Situation itself, must, I think, be admitted by every reasonable Person.—The Situation which so few can attain, affords in its Prospect, to many a Motive for honourable Exertion, and the Emoluments when compared with the Resources of the Country are trifling and insignificant, and certainly not more than adequate, when

considered with Reference to the Person on whom they are conferred, to the precarious Tenure of their Continuance and the Propriety of laying the Foundation of an hereditary Fortune for those who will in future enjoy the Rank of Nobility, in Consequence of the official Elevation of their Ancestor; and the Instances have been very few indeed in which an Objection could reasonably be made, to the Manner in which for many Ages the Appointment has been actually conferred.

The real Price which the Public pays, and which is incalculable in its Extent, arises from that Accumulation of Employment which is inconsistent with adequate Expedition and Attention; the overloading the great Depositaries of the Law with the Minutiæ of Detail, deprives them of the Opportunity of giving that full, prompt, and adequate Consideration to higher Objects of judicial Enquiry, which is proportioned to their Magnitude and Importance; and the very close Application requisite in a few of the principal judicial Situations, (almost wholly preventing those Intervals of Leisure and Relaxation which give additional Vigour to the Hours of Employment), renders it necessary, that the great mental Talents required for those Situations should be accompanied by no inconsiderable Portion of physical Strength.

Nothing is more frequent than the Complaints of Delay in deciding upon Cases in Bankruptcy, on the one Hand, and of the Obstruction which those Cases present to the regular Business of the Court, on the other, and the Extent and Magnitude of this Evil, in all its Consequences, exceed probably the largest Computation. That no Part of the Evil can be ascribed to the Individual at present invested with the Jurisdiction under Consideration, must be universally acknowledged. The Inconvenience is inherent in, and inseparable from the Thing itself, as the Subject is at present constituted; and to any Persons who have an adequate Information respecting it, the Wonder must be, not at the Degree to which it exists, but at the Extent to which it is obviated.

The Mischief of an excessive Multiplication of judicial Officers, was particularly manifest in the ancient Government of France. The present Administration of Justice in England is subject to all the Inconveniences of the opposite Extreme. I conceive that the Public would derive very great Advantages from the Institution of a Tribunal appropriated to the particular Jurisdiction at present under Consideration; and, if I may be allowed to dwell a little upon its particular Modifications, I would suggest that it should consist of three Persons, having the Designation of General or Principal Commissioners of Bankrupts; the Quantity of Attendance must be regulated by the Time which it would be necessary to devote to giving that full and perfect Attention to the Business with the greatest possible

Dispatch, which is the Object of the Proposal; but for ordinary Purposes, I think it would be desirable that at least one of the Commissioners should hold a weekly Sitting through the Year. I think, also, that there should be an appellate Jurisdiction to the Great Seal, but under such Restrictions as may prevent the recurring to it as a Matter of Course, so as to renew the Inconveniences intended to be avoided.

It also appears to me, upon the whole, more eligible that the Employment of the Commissioners should be wholly devoted to this Object, or at least that they should not be allowed to practice as Barristers. An Intimation has been given by the Lord Chancellor, of an Idea to commit the Jurisdiction to the Judges of Equity; but certainly, the Weight of Duty upon all the Judges is at present sufficiently heavy, and no Addition should be made to it, without as adequate a Compensation as would be given to Persons whose Attention would be confined to the immediate Object; and if it does appear preferable, to avoid making any Addition to the Number of judicial Appointments, I conceive that a Rotation of the puisne Judges would be preferable to throwing the whole additional Attendance upon the Barons of the Exchequer, and increasing the already extensive Avocations of the Master of the Rolls.*

The additional Expence of an Institution of this Description would be easily provided for by a certain Duty upon the issuing of every Commission; the Pressure of it would be scarcely perceptible to the Body of Creditors in the individual Instance, and would not bear a Proportion that could be named, to the Benefit that would be derived by all the Creditors in the Kingdom, considered as an united Body, in the general Result.

OF ISSUING COMMISSIONS UNDER AN APPROPRIATE SEAL WITHOUT PERSONAL INTERFERENCE OF L. C.

X. After suggesting Alterations of such Magnitude as those which have been just presented to you respecting the actual Jurisdiction in Cases of Bankruptcy, I shall not appear to extend my Ideas upon the Subject very considerably, by proposing an Alteration which is merely formal and mechanical; which, though it would affect the Propriety of the Language at present applied to the Subject on the one Hand, would relieve it from much actual Inconvenience on the other. I refer, Sir, to the Necessity of Commissions of Bankrupt being actually impressed with the Great Seal. The Expression of a Commission of Bankrupt "under the Great Seal of Great Britain," is certainly very energetic and sonorous, and it is probable that after having been so long accustomed to it, the mere weak

[* This Letter was published some Years before the Institution of the Office of Vice Chancellor, which in some degree lessens the Inconvenience alluded to; but the weight of Business incident to this Office in common with the other judicial Appointments, renders it impossible for the present Establishment, with the most assiduous Attention, to attain the Dispatch which the public Convenience requires.]

Expression of a "Commission of Bankrupt," may appear rather tame and insignificant. But the Name may still be retained, if that is important, notwithstanding the proposed Alteration in the Thing, and if the Acts of the Master of the Rolls, of a Judge officiating for the Lord Chancellor, or of such Commissioners as I have recommended, may be treated as the Acts of the Lord Chancellor there would be no very great Perversion in calling an appropriate Seal, kept for the Use of the Bankrupt Office, by the impressive Name which I have already mentioned; nor is there any greater Difficulty in the Idea of a Substitute for the Seal itself, than of a Substitute for the great legal Officer who is intrusted with the Custody of it.—In other Cases, a legal Process issues of Course from the regular Offices, upon the proper Documents, without any personal Trouble, of a merely formal and mechanical Nature, to the Judges of the Court.—A Commission of Bankrupt issues quite as much of Course as a Writ of Latitat, but it requires the Signature of the Lord Chancellor to the Fiat on the Petition and the Annexation of the Great Seal (which always accompanies the Person of the Lord Chancellor) to the Commission. This is often attended with considerable Expense, Inconvenience and Delay, and it must be obvious that it cannot possibly be attended with any practical Benefit As to the Extent of individual Benefit arising from private Seals, Expedition or other Appendages to the present System, I do not wish to deprive the Parties interested of any Part of their Emoluments but I conceive that these, so far as they are derived from the System which I propose to alter, might be fully compensated by a moderate Addition to the Charges of issuing a Commission in the ordinary Course, and that having removed any Impediment on that Ground, it would be desirable that the Office should at all Times be open for the issuing of Commissions in regular Hours; that no Docket should be admitted, except within those Hours, and that proper Regulations should be made for preventing an undue Preference between different Persons applying for a Commission against the same Estate, and who are in Attendance for the Purpose at the Time of the Office being opened.*

OF EXTENTS.

XI. I would here incidentally suggest the Propriety of a Commission attaching against the Claims of the Crown, from the Time of its Date, without the Necessity of a provisional Assignment. The Public Revenue should certainly be guarded with all proper Vigilance, but the Loss that would be sustained by the Nation at large, by the Claims of the Revenue being reduced to the same level as of those ordinary Creditors,

[* See Lord Erskine's General Order, Dec. 1806, for the Purpose here alluded to,—of which I was not aware at the Time of the former Publication of this Letter.]

would be trifling and insignificant, when compared with the serious Losses resulting to Individuals from the present System of exclusive Preference;* and in Cases of Extent in Aid, I think it would be very desirable to prevent a Person who happens to be indebted to the Crown from obtaining merely on that Account an Advantage over the general Creditors.†

OF THE AUTHORITY OF COMMISSIONERS.

XII. I shall deliver to you Sir, very shortly my Observations respecting the general Nature of the Commissioners' Authority, as that Subject does not appear to call, in any great Degree, for legislative Regulation. As a Matter of Convenience, I conceive it would be desirable that their Jurisdiction should be allowed to be exercised more extensively than it at present is, with Respect to Subjects of ordinary Occurrence, which are treated merely as Matters of Course, but upon which it is necessary to apply to the superior Authority, at an Expense which is generally incurred very unwillingly by Creditors, in Addition to the Loss that they have already sustained. The Orders made by Lord Loughborough in the Year 1794, were adapted to remedy this Inconvenience to a very considerable Degree, and I think it certainly would be desirable to carry the Principle of these Orders to a greater Extent. It is more particularly desirable that there should not be any Uncertainty in this Subject, but that the Practice should at least be settled and uniform, and that Commissioners should distinctly understand the Nature and Limits of their Authority.

I have heard it mentioned (with what Correctness I cannot vouch) as a Maxim of Lord Thurlow, that whatever Commissioners would be directed to do as a Matter of Course, it would be competent for them to do without Direction, and the Principle which that Maxim applies to the Case of Bankruptcy, seems to be recognized with Respect to another Subject by Lord Eldon in the Case of Stoner v. the Earl of Dartmouth, 7 Vesey, 450, when he mentions that Lord Kenyon, who was a Repository of valuable Knowledge, produced a Dictum of Lord Northington, that the Court would protect an Executor in doing what it would order him to do; and certainly, so far as any general reasoning goes, it would seem extraordinary that it should be necessary to adduce such a Quadruple Cord of Authority, in support of such a Principle. But it is certain that the Principle cannot, in the present Execution of the Bankrupt Laws, be at least generally applied, as is evident in the common Case of admitting joint Creditors to a Dividend upon separate

[* See Observation to the same Effect, 1 Christ. 307, m. and n. p. 131 ante.]

[† A Bill is at the Time of printing this Sheet, in progress, for remedying some of the Mischiefs arising from Extents in Aid; and a Committee of the House of Commons has been appointed to enquire into the general Character of the System.]

Estates—a Subject upon which I shall have to trouble you with a few Observations in the Sequel.

I have frequently, previous to the Act of the last Sessions, which makes a Proof conclusive to all Purposes, been engaged in Controversy, as to the Propriety of admitting a Creditor without an Order to prove his Debt, for the Purpose of assenting to or dissenting from a Certificate. I have been often told that such a Practice was disapproved, but not seeing any Decision in which that Disapprobation had been expressed, have uniformly contended for the Propriety of admitting such Proof, declaring at the same Time my Readiness to submit to any Decision which was produced, that such a Proof should be expunged, as having been made without Authority, the Moment afterwards be directed to be admitted of Course, as a perfect Matter of absolute Right.

OF SOME PARTICULAR REGULATIONS

XIII. There are some minor Subjects of Regulation, which, perhaps, would be more immediately connected with other Parts of my Address, but which I shall mention here in the Order in which they suggest themselves to my Attention.

It may appear very insignificant to suggest so minute a Provision, as that the Proof of Debts may be made before a single Commissioner, but, from the Experience which I have had, I know of no Provision that would have a more general Effect in removing an Inconvenience to Creditors, who are often delayed a considerable Time in Consequence of Commissioners being detained from attending at the precise Time appointed, and am not aware of any Inconveniences which would result from such a Regulation, that would not equally apply to the receiving Proof by Affidavit; the Proof should be considered as open to any Objections that might be made against it, at the Meeting at which it was made.

It is an established Rule, that Commissioners shall not have the Authority of expunging Proofs which are once admitted, and as there is often a very inadequate Opportunity of investigating such Proofs at the Time of their being offered, many are allowed to pass as Matter of Course, which, upon a fair Examination, would be found by no means admissible. The Expence of a Petition to expunge a Proof thus admitted, is, in many Cases, much more considerable than the Dividend upon the Proof itself, and as the only Motive which may be expected to actuate Creditors upon such Occasions is the Balance of a Profit and Loss Account, such Proofs are frequently suffered to remain after a complete Manifestation of their Impropriety; I conceive the Result of a fair Consideration upon the Subject will be, that less Inconvenience will arise from allowing Commissioners the Jurisdiction to review the Proofs which have been received, than from the Continuance of an opposite System. To Commissioners themselves according to

the ordinary Rules of Computation, the present System would be more convenient, as relieving them from the additional Trouble that would result from the Alteration.

The Necessity of appointing the third Meeting on precisely the forty-second Day from the Notice in the Gazette, is often attended with Inconveniences which more than compensate any supposed Advantages that may result from it, as it is often foreseen at the very Time of appointing the Meetings, that it will be necessary to make an Application for enlarging the Time; as, when the Meetings would interfere with the Attendance on a Circuit; and I am not aware of any Inconvenience which would result from allowing a certain Degree of Latitude, as, for Instance, any Time not less than thirty-five Days, or more than forty-nine.

It may also deserve Consideration whether a subsequent Enlargement of the Time, might not be committed to the Authority of the Commissioners, without much Objection; the present Power of Enlargement, which is exercised in Practice completely as a Matter of Course, upon mere Suggestion, not verified by any Affidavit, is attended with considerable Expence. There is another Circumstance connected with the Enlargement of the Time, which although trivial in itself, is not entirely unworthy of Notice when the general Subject is under Revision. When a Bankrupt applies for an Enlargement of Time to surrender, the Petition points out a certain length of Time, which, as I have already observed, is ordered of Course. This Time may materially interfere with the other Engagements of the Commissioners, and I have in Fact known it interfere with the Attendance on a Circuit, and this Inconvenience would be easily remedied by allowing, upon such Petition, the same kind of Latitude which I have just alluded to, and I conceive that no reasonable Objections could be made to such Provision.

The present Practice of requiring Commissioners to wait till twelve o'clock at Night for the Surrender of a Bankrupt, is attended with Inconveniences which are not compensated with any adequate Advantage, and a Party acting *bona fide* would seldom have Reason to complain of a Regulation that should require his Attendance within three Hours of the Time appointed, a Principle which is recognized in the common Order for the Enlargement of Time, and which contains a Condition that the Surrender must be made between the Hours of eleven and one.

The compelling the Attendance of Witnesses at the Opening of the Commission, would seem a necessary Incident of the general Power intrusted to the Commissioners; but as the Practice at present stands, there must, after Refusal, be an Application to the Great Seal for an Order for that Purpose,

which certainly is a very cumbrous Appendage to the Proceedings, and will, I have no doubt, be thought a proper Subject for Amendment.

AN INACCURACY IN ST. 5 G. 2, S. 1

XV. I do not mean to address you particularly as to the Revision of the penal Consequences attached to a Commission of Bankrupt, or how far it may be politic to mitigate the present severity of the Law; but I think you will certainly perceive the Propriety of giving some Correction to the long and ungrammatical Clause creating a Felony in Stat. 5 Geo. 2, C. 30, S. 1, which provides, that "if any Bankrupt shall not surrender and submit to be examined, and also fully and truly disclose and discover his Estate, and how he has disposed of it, &c. &c. and also deliver up all such Part as is in his Possession," —not that *every such* Bankrupt offending against those Provisions, but that every such Bankrupt in Cases of Default or wilful Omission in not surrendering and submitting to be examined, or embezzling to the Amount of £20, shall be guilty of Felony—leaving a great Part of the Offence intended to be described in the preceding Part of the Clause, wholly unprovided for in Respect of the penal Consequences, by introducing a restrictive Expression which limits those Consequences to particular Cases of a much less comprehensive Nature.*

XVI. The next Topic to which I shall beg leave to call your Attention, is the examining other Persons than the Bankrupt. This Power is in one Respect too limited as it does not extend to the Production of Books and Papers; a defect which might be easily supplied. But I think upon the whole it rather requires Restriction than Extension. The Subject has some Analogy to a Bill of Discovery, and it seems reasonable that a Party, whose Examination is required for the Benefit of the Estate, shall not personally be subject to the Expense of attending for the Purpose; and in this Case legal Fiction is, as in many others, frequently at considerable Variance from Matter of Fact, for every Person is presumed to have the Means of Travelling in his Pocket; and in Case this Presumption does not accord with the Reality, as is certainly sometimes the Case, a Man with the purest Intention may, upon a mere Suggestion that he knows something about a Subject of which he is wholly ignorant, or respecting which he is ready to furnish every Information in his Power, be dragged in Chains from Berwick to Penzance, without Compensation or Redress.†

The Subjects of Enquiry seem also to require some Limitation, as the Power of the Commissioners, as it is at present understood, is much more extensive than the Powers of Discovery in Suits in Equity, the Proceedings upon which are

[* This Inaccuracy did not occur in the preceding Statutes, from which the Substance of the Enactment was taken, see n, p. 87, supra.]

[† See 1 Jac. 1, Ch. 15, n. 16, 17, 18, supra.]

regulated by the real Principles of Justice. The Protection of a Purchaser for valuable Consideration may almost be considered as incidental to the Estate itself and certainly there is no Rule of Proceeding more fair and equitable; but as the Law is laid down with Respect to Examinations in Bankruptcy, this Protection cannot be resorted to. Creditors certainly ought to be favoured and assisted in procuring the Payment of their Debts, but not to the Prejudice of others, and there are few Proverbs better founded on good Sense than that which forbids robbing Peter for the Purpose of paying Paul.

But the most curious Incident of this Part of the Law is the Manner of obtaining Relief from being obliged to answer an improper Question. The Party has no Appeal, but must either answer the Question, which, for the Moment I will assume to be the most objectionable that could possibly be asked, or insist upon not answering it and be committed to Prison, and then, if the Impropriety of the Question, or the sufficiency of the Answer is established he may obtain Relief by bringing an Action of false Imprisonment, which certainly appears as incommodious a Manner of settling the disputed Point, both for the Party and the Commissioners, as any that can be devised. I think that the real Justice of the Case upon this Subject would be best attained by the Summons expressing, if desired, the Points upon which the Examination is intended to be made in a Manner in some Degree analogous to a Bill in Chancery, with an Opportunity of applying for Relief against it by Petition. I am aware that some Inconvenience would arise from this Alteration, but it seems to me that those Inconveniences are of very inferior Consideration to the absolute Injustice of adhering to the present System.

OF PROOF OF DEBTS ABROAD

XVII. With Respect to the Right of proving Debts, the Ignorance of Persons resident in Scotland or Ireland, of the Necessity of making the Proof before a Magistrate, attended by a Notary Public, sometimes puts Creditors to Inconvenience, and probably it may be thought expedient to allow a Proof before either a Magistrate or a Notary Public, as sufficient.*

OF SURETIES

XVIII. The Determinations respecting the Surety having the Benefit of the Creditor's Proof against the Principal, and which limit that Benefit so as to admit the Creditor to have as large a Dividend upon any distinct Debt, as if that Proof had not been made, are not only unsupported by, but in Opposition to any general Principle of Justice. When a Surety is indisputably solvent (and his actual Payment is full Evidence of Solvency, so far as regards the present Question,) he may be considered for this Purpose as the effective Creditor, as he is

[* I think it might be desirable to give a Direction for receiving Proofs by Affidavit, where the Party lives at the Place where the Commission is executed.]

the Person upon whom the real Danger of Insolvency in the Principal must fall; upon discharging his own Obligation, it is a manifest Equity that he should be substituted to all the Rights of the Creditor; the Creditor, in Respect of his ulterior Debt, has, in the Nature of the Thing, no equitable Claim to more than a Dividend in Proportion with all other Debts upon the Bankrupt's Property, and there is no Reason that the Accident of his having another Debt fully and effectually secured in a different Manner, and which therefore, to him in Respect of the Insolvency, is as no Debt, should entitle him to a greater Advantage in Opposition to the Persons upon whom whatever Loss may eventually arise, on Account of the general Disproportion between the whole of the Bankrupt's Debts, and the whole of his Effects must necessarily fall, and which, if he had discharged the Debt before the Bankruptcy, or according to the beneficial Provisions of the late Act after the Bankruptcy, would be entitled to the full Benefit which is contended for.*

OF THE PROOF BEING A CONCLUSIVE ELECTION.

XIX. The late Provision, that a Party proving a Debt shall be deemed to have made a complete Election for all Purposes, appears to me extremely objectionable, as, by this Means, a Bankrupt will either obtain his Certificate upon the Proofs of Persons who are favourable to him, or will have the same Benefit in Respect of other Creditors being debarred of their legal Remedies. The only Way in which this can be obviated, is by their being some Creditors who prove so as to prevent the Certificate, while there are others who pursue their Remedies at Law. But I apprehend that the Consequence which I have pointed out to you as an Inconvenience, may appear to you in the opposite Light, of an Advantage; and as this will depend upon the correct Exposition of the Principles respecting the Bankrupt's Liberation by a Certificate, a Subject which will present itself to our Attention before we have advanced many Steps further, I shall decline enlarging upon it more particularly at present.

XX. I shall trouble you with a very few Words respecting the Assignees. The Election is by the Majority in Value; but the following Questions, which have lately come before me in Practice, may perhaps deserve to be settled by positive Regulation.

OF THE CHOICE OF ASSIGNEES.

1—When there are several Lists of Votes, and there are more Persons in Favour of any given Person being an Assignee, than against him, although there is a List in which he does not appear of greater Value than any one in which he does, is it proper that he should be considered as elected? For Instance, the Votes are for A. and B. 2, for A. and C. 3, for D. and E. 4; there are more Votes in Point of Value in Favour of A. being an Assignee, than against it, but the List in

[* See Note p. 157 ante.]

which A. is excluded, is greater than either of the others. When an Appointment is to fall upon a definite Number, it is a Matter of Course that those who have the largest Number of Votes are the Parties elected. But it does not necessarily follow that this Rule is to be applied to an indefinite Number, although I conceive, upon the whole, that the Weight of Argument is in Favour of the same Principle, and that the real Question supposed to be put to each Creditor shall be— whether a particular Person shall be elected or not? But the Case may occur in which there may be a larger Value against any Individual who is proposed, than in his Favour, as A. 2, B. 3, C. 4. In this Case, there would be no Difficulty in considering the Election as falling on C. If, however, the Votes were for D. A. 2, D. B. 3, D. C. 4, the Case would not be equally Clear as to whether the Election fell upon D. solely or upon D. or C.

2—Where a Creditor has voted for A. but it afterwards appears that B. will have a larger Number of Votes than A. but that, by transferring the Vote from A. to C. or by giving an additional Vote to C. he may give him a Majority over B., should he have an Option of doing so? 3—When a Person has expressly declined voting, shall his Vote be afterwards admitted? And, 4—To what Period of the Business shall the Alterations or Additions allowed to be made, whether at any Period during the Continuance of the Meeting; or whether when the Commissioners declare their Intention to sum up the List, according to the Votes then offered, the Election shall be deemed to be closed?*

I am very well aware, that these are Questions of no great Magnitude, and I certainly should not have offered myself to your Attention, if I did not attach much greater Importance to many of the other Topics upon which I have addressed You; but, as Disputes upon these Questions may arise, and as I have actually known them to do so, I have thought it not improper to notice them.

Another Topic with Respect to Assignees, is the Admission of Creditors to appoint Assignees, with a Provision that they shall receive a Compensation for their trouble. Although there is often a Competition for the Appointment as an Assignee, it is not unusual to witness the opposite Case of extreme Backwardness to accept it, and of great Difficulty in procuring any Creditor who will do so. This is particularly

[* Mr. Christian says, Vol. 1, p. 258, n. " In Case of a Dispute the Commissioners must decide by asking each Creditor whom he Votes for, and putting down the Amount of his Debt, and if some Vote for A., some for B., and some for A and B together, the Choice must be declared according to the greatest of these three Sums. But Qy. if this Practice is universal or merely the Course adopted by particular Lists.]

the Case when the Aggregate Amount of Profits is very large, but the individual Debts are very small, as often happens in the Failure of Country Banks, who issue small Notes, and no Individual has a sufficient Motive to undertake the Trouble for which the Difference of a Dividend upon his own Debt of one Shilling in the Pound, more or less, would afford no adequate Compensation. And even in Cases not of this extreme Nature, a Person will not be found in the general Course of Things to pay an equal Attention to Objects in which he has only a divided Interest with others, with that which he devotes to other Objects which are entirely his own. This is best obviated by the Appointment of Persons who have an Interest in attending to the Subject, by receiving an adequate Compensation for doing so; and upon the long run of Society, Business will be the best done which is the best paid for, provided the Selection of the Person who is to do it depends upon those for whose Benefit it is to be done. In the Course of my Experience upon Commissions of Bankrupt, I have always thought that the Expence of employing a respectable Accountant, whose Business and Occupation it is to attend to the Subject, and whose Interest is promoted by obtaining a Reputation for Activity and Dispatch, was very fully repaid to the Estate. It has not been so usual of late to place such Accountants in the Character of Assignees, as it formerly was; and so far as a Commissioner may interfere upon the Subject, I have generally discouraged it, as a Compensation can be more regularly allowed when the Accountant is a mere Agent. But I still think it desirable that the Creditors shall be allowed to exercise an Election upon the Subject, in which the Act of the Majority will be obligatory upon the whole. The Responsibility established by some late Opinions with Respect to Assignees, is very much calculated to deter Persons from accepting that Situation, in the same Manner as the Responsibility attached to Executors and Trustees, renders those Situations very hazardous, and such as no Person of Practice will accept without strong Motives of personal Attachment. When an Assignee is appointed in the Nature of an Agent, upon the Principles which I have suggested, it would be highly unreasonable that he should have to stand the Brunt of all the Consequences of the Commission being found invalid.

OF COMMISSIONERS IN THE COUNTRY

XXI. Upon that fertile Topic of Observations, the Execution of Commissions of Bankrupt in the Country, it is probable that the Suggestions of a Person whose principal Knowledge of the Subject is derived from his Experience upon those Commissions, would be received with a great degree of Caution. I admit that certain Feelings, not of the pleasantest Nature, have been excited by what I read, and the Accounts which I occasionally hear, of general and indiscriminate Cen-

sure applied to this Subject. It was my original Intention to have enlarged very considerably upon the Propriety of what, I hope I am justified in considering as an unfounded Prejudice; and of laying before the Public the particulars of a Case in which the Conduct of a Gentleman of the most unblemished Honour has been exposed to great severity of Animadversion, and attended with great pecuniary Loss, in Consequence of the Imputation of having mistaken the Limits of his Authority, when actuated by a Spirit of Indignation against the most flagrant and atrocious Perjury; but as enlarging upon these Topics would be imputed, perhaps justly, to Considerations rather of private Sentiment than of public Interest, I shall forbear to do so.

Although I certainly am not aware of many Instances in which any material Abuse has arisen from the Appointment of Commissioners in the Country, upon the mere Nomination of the Party applying for the Commission, there can be no Doubt but that such Mode of Nomination, is particularly calculated to afford a Facility for such Abuse; and that an Arrangement which would prevent that Effect, would be very desirable: and however little Disposition there may be in the Persons actually nominated, to act under the influence of any Impressions arising from the Mode of their Nomination, such Influence will, from the very Nature of the Thing, have an unconscious and involuntary Operation. I believe that Birmingham is the only Place where any System is established upon the opposite Principle, with what Success or Advantage you have probably some Opportunity of knowing. The Choice and Recommendation of proper Persons is difficult and invidious, and there certainly can be no Persons who would be less desirous to interfere in such Recommendation than the resident Barristers. I am aware that any Regulation upon this Subject belongs rather to the Administration of the Law, than to its Enactment; but possibly it may occur to you, that the Matter is not wholly unsusceptible of legislative Arrangement. Perhaps the Fact may be, that an Arrangement founded upon other Principles than those which regulate the existing Practice, however convenient in Theory, has been found unattainable in Practice; as it is well known that Lord Loughborough about the Time of making the Orders already alluded to, had such a Measure avowedly under his Contemplation.

OF THE PLACE OF EXECUTING COMMISSIONS.

XXII. The Place of executing Commissions is a Subject which it may be desirable not to overlook in the Formation of a general System. With the Exception of Commissions against Persons resident within a certain Distance of London, the Determination rests entirely upon the Choice of the Petitioning Creditor, who, of Course, consults his own Convenience, which may be very opposite to that of the Creditors at

large;* and if any improper Purpose is entertained, the Accomplishment of it may be much assisted by appointing a Place, at which minute Inspection and Examination would be most particularly inconvenient to the Creditors. If certain Divisions or Districts were previously adjusted, a Regulation might be judiciously adopted, that the Commission should be executed in the District where the Trade was carried on, or in one of the Districts where it is carried on at several Places;—with a special Power to alter that Destination upon a particular Reason verified by Affidavit. I do not conceive that it would be necessary minutely to divide the whole Kingdom for the Purpose of such a Regulation. In many Parts of the Country Commercial Transactions are of such insignificant Amount, that Commissions of Bankruptcy are of unfrequent Occurrence, and it may be left to the Prudence of those who have the immediate practical Direction of the issuing of Commissions, to exercise a Discretion as to the Propriety of the Place which is recommended by the Party applying. Upon this, as upon the preceding Topic, it would be difficult, if not impossible, to enter into every Particular in making a legislative Provision, but the general Principle of the Subject may be in some Degree attended to.

OF THE FEES OF COMMISSIONERS.

XXIII. The next Subject to which I propose to direct your Attention, is the Regulation of the Compensation to Commissioners. When a Commission is executed at a Place where the Commissioners reside, or have a regular Establishment of Practice, I conceive that no Alteration is wished for, notwithstanding the great Disproportion between the Value of the regulated Allowance at the Time when it was established, and at present:—but when a Commission is to be executed at a different Place, it of Course is not to be expected, that Persons without any adequate Motive, will not only make the Sacrifice of Time, but incur the absolute Expence, which would result from the strict Execution of the Law as it at present stands. I am not apprehensive of being charged with any improper *esprit de corps* in conceiving, that the Practice which has generally prevailed, and is now established by positive Regulation,† of naming Barristers as Quorum Commissioners, is founded upon very considerable Motives of Public Utility. The general Convenience of executing the Commission where the Business has been carried on

* I have, within a very short Period, been engaged at Manchester in the Execution of Commissions against Parties resident at Newcastle-upon-Tyne, at Berwick, and at Thetford. In none of the Cases was any personal Impropriety imputable to the Petitioning Creditors, and probably the Circumstances were such as would have warranted a Dispensation from any general Regulation, as suggested in the Text; but these Cases are strongly illustrative of the Propriety of such Regulation. —*(Note to the first Edition).*

[† Lord Loughborough's Order, 1800.—It was noted by Lord Eldon ex p. Horeby, 1 Rose, 58, that the Order does not apply where no Barrister can attend for the regulated Fee of 20s.]

and where a large Proportion of the Creditors usually reside, is also sufficiently obvious, and although in the formal Account of the Assignees a larger Balance may appear by requiring the Creditors to attend at the Places where there are resident Barristers, than from making a Compensation to the Commissioners for attending elsewhere, the real Price paid by the Creditors separately and individually, not only in Expence, but Inconvenience, and Loss of Time, will be considerably greater than in adopting the opposite Arrangement. The Regulation in the existing Statute cannot be presumed to have been intended to apply to Cases of this Description, and the Journey must be a very short one indeed, upon which the authorized Receipt would not be exceeded by the Expence of travelling.

I think that upon this, as upon the preceding Topic, minute Legislation would be improper. But a general Provision is requisite, that a suitable and proper Compensation should be made, subject to be limited and regulated by the Authority of the Great Seal, and in the subsequent Execution of that Authority, although an [illegible] extravagant would be justly discountenanced, the [illegible] such a Remuneration as bears a reasonable and adequate Proportion to the [illegible] Emoluments of professional Practice, would be [illegible] to the Public than a [illegible] Restriction, which would be wholly inadequate to compensate the Attendance of those who are otherwise beneficially engaged in the Exercise of their Profession, and who may be considered as the most likely to discharge the Duty which they undertake with Propriety and Advantage.—and it would be contrary to all Principle and all Experience, to expect, upon a general System, that those Employments will be beneficially exercised for the Public, which are not attended with any adequate Inducement to the Persons most suitably engaged in them.

XXV. A more important Subject of Consideration is the Liability of Commissioners, with Respect to the Responsibility for their Acts in that Capacity. Without agitating a verbal Question respecting a judicial and ministerial Authority, I certainly think it a Rule of Justice, that any public Functionary, acting with perfect Integrity and reasonable Information in the Execution of the Authority with which he is entrusted, should not be responsible, (at least to the present extent of the Law with Respect to the Commissioners of Bankrupts) for an Error of Judgment, much less for a want of Information which it is not within the reach of ordinary Diligence, expected from Persons in such a Situation, to obtain. I have lately seen it observed, that Parties cannot have Redress for the Errors of Judges, as no Fortune would be adequate to the Reparation which would be demanded upon an opposite Principle, but, I conceive, that this View of the Case is very defective and

OF THE RESPONSIBILITY OF THE COMMISSIONERS.

imperfect. Where it is competent for a Person to act, or not to act, at his Discretion, there is Nothing unreasonable in subjecting him to all the Responsibility for the Consequence of an erroneous Opinion; but when an Opinion must be formed on the one side or the other to satisfy an actual Duty, reasonable Skill, ordinary Diligence, and perfect bona fides, are as much as it is consistent with the grand Principle of public Utility to require. To advert more particularly to my immediate Subject, is it reasonable that the Commissioners shall be accountable for the Veracity of a Petitioning Creditor, as to the Existence of his Debt? Supposing the Veracity out of the Question, is it reasonable that after declaring a Bankruptcy upon the Oath of such a Creditor, according to the established Practice, they should be responsible in Damages, for his not being prepared to prove the same Fact by extrinsic Evidence?*

And from Questions of Fact, to proceed to Questions of Law, it is a legal Fiction that every Person is presumed to know the Law, but is an obvious Fact that many of the most enlightened differ in an extreme Degree, upon what the least enlightened are presumed intuitively to know. To talk of Right and Wrong in the abstract, may be a very agreeable Amusement; but in the actual Occurrences of Life, different Judgments as to right and wrong, are a Matter of constant Experience: and to subject a Commissioner to the Imputation of having acted wrong in Consequence of his having differed from the subsequent Opinion of a Majority of Judges, upon an intricate legal Proposition as to a Question of Bankruptcy, so as to be answerable for all the Damages sustained in Consequence, when those Judges themselves would not be subject to any such Responsibility if their Opinion was afterwards overturned by superior Authority, although they may be reasonably supposed to have a greater degree of Knowledge, if there can be a majus and minus with Respect to that Knowledge which is deemed to be absolute and universal, does not seem to be by any means reasonable or consistent. And any Observations upon this Subject, in general acquire additional Force, when

[* I have lately known it decided at Nisi Prius, that after the Supersedeas of a Commission no Person could justify acting under it, (for Instance in a Messenger) although prepared to prove all the legal Requisites. Such a Determination may be often attended with very prejudicial Consequences, for a Supersedeas may be obtained without Persons, who have become responsible for Acts executed under its Authority, having any Opportunity of being heard in support of its Validity, and even upon the mere Consent of Creditors, when the Validity is unquestionable. The Authority while subsisting ought in Reason to be placed on a similar footing with the Process of a Court upon a Judgment, or the Warrant of a Magistrate upon a Conviction, and not be considered as a mere Nullity in Consequence of the Judgment or Conviction being afterwards set aside.]

applied to some of the very indefinite Provisions of the present System of the Bankrupt Laws; as upon the Power to commit for not giving satisfactory Answers; and when the Commissioners happen to be dissatisfied with an Answer as evasive, which to the subsequent Judgment of a Court may appear sufficient and distinct. In extreme Cases one way, the Hardship may not be apparent; but the Case is materially altered when you come to the opposite Extreme, in which satisfactory and unsatisfactory Answers approximate so nearly to each other, that the most acute legal Metaphysics cannot supply a satisfactory Criterion for distinguishing them.*

OF DISPUTING THE VALIDITY OF COMMISSIONERS.

XXVI. It may be sufficiently collected from what I have observed upon other Subjects, that I conceive that the most correct Mode of a Party against whom a Commission of Bankruptcy has issued, contesting its Validity, is by an Application for a Supersedeas; and, indeed I think it desirable, that the Commission should be considered as so completely operative upon the Person and Estate of the Bankrupt, that he should only be permitted, in the first Instance, to contest it in this specific Way, and not by Action of Trespass, or any other incidental Manner. But there are two Rules of Practice upon the Subject, which appear to require a very serious Consideration, and which, although I must presume them to have been founded upon adequate Motives, are not very obviously reconcilable with the Principles of Justice.

The first of these Rules is, that a Party shall not be allowed to apply to supersede a Commission, without a previous Surrender to the Commissioners, which is, in a certain Degree, submitting to the Authority that he insists to being invalid, and the Validity of which, without any such Surrender, it is competent for him to contest, as the Law at present stands, either in a civil Action or a criminal Prosecution.† It is possible, on the other Hand, that Inconveniences have been experienced from the opposite Practice being indiscriminately allowed, which have led to the Adoption of the present Rule; I think, therefore, that the proper Plan would be to adopt a middle Course; to give the respective Parties an Opportunity of submitting the Question in each particular Case to the Consideration of the Court, upon a particular Motion; but that, with Respect to the Discretion to be exercised upon such Motion, the Surrender should be dispensed with, whenever the Opposition to the Commission appears to arise from a fair and real Objection to its Validity, and not from any vexatious or improper Motive.

The other Rule which I refer to is, that a Bankrupt is not entitled to inspect the Proceedings against him, for the Purpose

[* See St. 5, Geo. 2 supra, Geo. 15, 17 and Notes.]

[† See the Observation of the Vice Chancellor in favour of this Practice, ex-parte Roberts, 1 Mad. 72.]

of assisting him in applying for a Supersedeas of the Commission, and which Rule seems to require a much more serious Observation than that which I have last adverted to. Whether the Opinions which are unfavourable to friendly Commissions are or are not well founded in Point of Principle, I think that the Consequences resulting from an adverse Commission, are such as should prevent any Obstacle being opposed to a Person who has Reason to think that he is not a legal Object of it, requiring the Discussion of that Question in the most prompt and convenient Manner; and, I apprehend, that the Instances of Mischief which arise from the improper and wanton issuing of adverse Commissions, are, at least, equally great and serious with those which have arisen from any other Abuse of the Bankrupt Laws.

It will not be necessary to dwell upon the Hardship of a Case, in which a Person, who may be perfectly solvent, who may have been absent from his House not only upon the most innocent, but upon the most laudable Motives, who is not really indebted to the Party prosecuting a Commission against him, shall, in Consequence of the improper Motives of an alleged Creditor, or for the Advantage of a dishonest Solicitor, be stripped of the Possession of his Property, driven with his Family from his Habitation, and exposed to all the other Miseries which might result from the oppressive Execution of a Commission of Bankrupt; and all this upon a private and ex-parte Proceeding; upon Examinations, in his Absence, which he has not, at the Time, the Opportunity to contradict or oppose: yet, the possibility of all these Consequences, (subject to a Claim of Relief, in Case of Error, by invalidating the Commission, or of Redress by Damages, in Case of actual Oppression), may, perhaps, be necessary for giving proper Effect to Commissions that are unobjectionable; but, surely, when the Party wishes to appeal from what has been done, and to submit it to the regular Course of Examination and Enquiry, there can be no Motive of Convenience sufficient to countervail the essential Principle of Justice, which requires, that he should be at least admitted to know, to oppose, and to controvert the Allegations upon which he has been thus involved in Ruin. In other Cases, a Party has an Opportunity of hearing and of opposing the Evidence, and of examining the Documents upon which legal Proceedings have been instituted against him. In all Cases, the depriving him of the Opportunity of apprizing himself of them, is contrary to the Rules of universal Equity; but here the Opportunity is withheld, and if he wishes to arraign the Regularity of the Procedure, he must take his Steps at Random and in the Dark. If I were to enter into the minutiæ of the Subject, I might enlarge upon the Propriety of being able in a Petition distinctly to state the alleged Grounds of Bankruptcy, and

distinctly to bring before the Court the Circumstances by which they might be explained or contradicted. But having endeavoured to expose the Nature of the Question, as depending upon its great and important Principle, I feel that I should rather enfeeble than assist my Argument, by incumbering it with the particular Niceties of technical Detail.*

[* In a very late Case upon Petition to supersede a Commission on the Bankrupt's Affidavit, that to the best of his Knowledge and Belief no Act of Bankruptcy had been committed, and there being no Affidavit filed, in Opposition the Vice Chancellor said, he thought the Court was not prevented from looking into the Proceedings, but as that depends upon the Practice which had been disputed, he ordered the Petition to stand over.—On a subsequent Day his Honour said it was the Habit of the Lord Chancellor in these sort of Petitions to inspect the Proceedings. "The Commissioners are Officers of the Court and if a Party complains of an unjust Proceeding on their Part, it becomes necessary for the Court to look into the Depositions. Suppose Nobody had appeared against the Petition, the Court must have inspected the Proceedings; but though the Court looks at the Proceedings it does not suffer the Bankrupt to see them. If that was permitted we should always have these sort of Petitions to enable the Bankrupt to see the Proceedings, though that is not permitted when he brings an Action at Law. If the Court on looking into the Depositions finds that no Act of Bankruptcy has been committed, it will of Course supersede the Commission. I have communicated with great Authority on this Subject. The Practice in these Cases being important," ex parte Vypond, 1 Mad. 624. Unfavourable as my Impression of this Practice was seven Years ago, when I first adverted to the Subject, that Impression has certainly not been altered by subsequent Reflection, and has been rather strengthened than diminished by the Case which I have just referred to, there not being, so far as I am aware, another Instance in the whole Compass of our Jurisprudence, in which a Person is affected in a judicial Proceeding by Evidence which he has not an Opportunity to know, to comment upon, and to contradict; and however convenient certain Rules of Practice may be in Point of Arrangement, there are great and fundamental Principles of Justice to which all Matters of practical Detail should be considered as essentially subordinate. I am aware that existing Practice is sometimes considered as equally sacred and equally entitled to Protection from the Spirit of mischievous Innovations, as the clearest *Principles* of Right. Such, however, has not been the Opinion of all who have filled the Seat of Justice. Lord Mansfield, whose Name I hope will ever be connected with every Thing that is great in Jurisprudence, although, from some incidental Mistakes in Respect of the Means which ought to be resorted to for the Attainment of a beneficial End, (he is often the Subject of Cavil and Comment), was of a different Opinion, when he observed, that when an Error is established and has taken Root, upon which any Rule of Property depends, it ought to be adhered to, by the Judges till the Legislature thinks proper to alter it; lest the new Determination should have a Retrospect, and shake many Questions already settled; but the reforming erroneous Points of Practice can have no such bad Consequences; and therefore they may be altered at Pleasure, when found to be absurd or inconvenient, Robinson v. Bland, 2 Bc. Rep. 259. But however hopeless it may be to expect an Alteration of the subsisting Practice by less than legislative Authority, I trust that if the general Subject of the Bankrupt Laws does ever receive the Revision which the above Letter contemplates, so very objectionable an Anomaly, will not be suffered to continue unreformed.]

OF RELATION TO THE ACT OF BANKRUPTCY.

XXVII. The Public, Sir, are under very considerable Obligations to you for the Extent to which you have procured an Alteration in the Law, as to the effect of secret Acts of Bankruptcy; and it possibly may be found useful to extend the Protection already given to all Cases of bona fides, previous to the issuing of the Commission, especially with Respect to the Titles to real Property, or to afford some intermediate Relief; but this Subject has, of Course, fallen very fully under your own Consideration, and I am not prepared to offer you any particular Remarks respecting it.

But there are some Cases with Respect to known Acts of Bankruptcy, upon which, I think, it will be desirable to introduce an Alteration in the Law. The first of these is, the Case of Payment to a Creditor who is known to have committed an Act of Bankruptcy; and, with Respect to which, the Debtor is at present in this Situation. If he makes the Payment, and a Commission afterwards issues, he is liable to pay a second Time; if he does not make it, and a Commission does not issue, he is liable to be sued; and then, if he pays under the Pressure of the Suit, he is protected; but still it is undefined how far the Suit must go; and it has been strongly intimated, that if any Thing like Agreement occurs in the Business, and it is not entirely a Matter of Compulsion, the Protection will not apply. Surely, Sir, all this is very repugnant to the Principles of Justice. An Action supposes a previous Duty and Default, and does not, in general, create one. The Costs of an Action, and the Inconveniences and Disgrace of an Arrest, are very serious Things, and it will be extremely difficult indeed, to find an adequate Reason for a Debtor being subjected to these, merely in Consequence of the preceding Act of his Creditor, and without any Misconduct of his own; and as long as there is no other Person whom the Law has appointed to receive the Payment, it cannot, upon the broad Scale of Justice, be desirable that the Debtor should incur a Loss from making the Payment to the Person who may sue him for not doing so.

Another Case which I think it necessary to mention, is the Title to an Estate affected by an Act of Bankruptcy. As it is impossible for a Purchaser in every Case to have an absolute Knowledge of the negative Fact, that there are no Creditors who can or will take out a Commission, the Estate is completely taken out of the Market, and rendered unsaleable; and, on this Ground, it can never be safe to take a Title under a Conveyance of real Estate, accompanied with an Assignment of personal Estate for the Benefit of Creditors.—The proper Remedy for this Inconvenience seems to be, that unless a Commission is taken out within a definite Time after the Act of Bankruptcy, it shall not be allowed to defeat the Title; and, if I propose any Thing here which may press against the in-

terest of Creditors, I hope another Suggestion which will presently occur, will be found a proper and adequate Compensation.

In Fact, Sir, the other Instances in which a Party is affected by Notice of an Act of Bankruptcy for an indefinite lapse of Time, seem to proceed upon no adequate Principle of general Utility, considering the absolute Uncertainty as to whether any Commission may ever be taken out, and the loose and indistinct Evidence upon which Questions of Notice very frequently depend. See Note, pa. 51 ante.

I am very far from being satisfied, that there is any real Advantage to the Public in allowing a Commission of Bankrupt to be taken out at all at any distant and unlimitted Period; and that it would not be a material Improvement in the System to provide, that no Commission should be supported in Consequence of an Act of Bankruptcy which took Place more than a Year before the issuing of the Commission. The original Object and the general Spirit of the Bankrupt Laws (a Phrase which I can understand when speaking of a Subject of legislative Policy, however averse to it as influencing a judicial Construction) is, that the Estate of the Party shall be administered in Satisfaction of his Creditors, and under their Direction, when by Reason of the Derangement and Insolvency of his Circumstances, he is disabled from rendering them Justice, by being left in the Administration of it himself. Certain Criteria are adopted as proper Indications of the State of Insolvency and Derangement, sufficient to produce that Effect; but it would be more reasonable to regard them rather in the Nature of Presumptions (Presumptions, however juris de jure, and not Subject, in the first Instance, to Examination or Contradiction) of an actual State of Insolvency, than as the real and efficient Causes of an Application of the compulsory Authority of the Bankrupt Law; but since such Presumptions are very frequently at Variance from the actual Existence of the Fact, and result rather from temporary Embarrassment and Inconvenience, than from actual and complete Insolvency, they may reasonably be considered as repelled by a sufficient Manifestation of the real State of the Fact; (in other Words—that a Presumption of Insolvency from an Act of temporary Delay, may be answered by the Fact of being able to continue in a Course of Trade for such a Period as I have mentioned, without any Creditor finding it his Interest to apply for a Commission); and I do not think there is any Thing unreasonable in the Principle of disallowing such Presumption to have its Operation, however originally well founded, when opposed by Circumstances which may afford an equal or greater Reason for applying another Presumption in Opposition to it. If a Commission is necessary in Consequence of a subsequent actual Insolvency, that Insol-

vency should be left to its own immediate Consequences, without being connected by the Operation of the Law, with preceding Circumstances, from which it may be considered as perfectly distinct in Point of Fact. Some Inconveniences would, no Doubt, arise from such an Alteration; but Legislation must be very much at a stand, if it were to be checked by merely regarding the positive Inconveniences which would result from the Adoption of a particular Principle on the one Side, instead of balancing it with the equal or greater Inconveniences on the other. I do not profess to have very particularly reflected upon this Suggestion, and it has only presented itself to my Mind as the Sheet in which it appears is about to be committed to the Press:* but, according to the View in which it at present appears to me, it is a Suggestion which would be beneficial to the Community at large, however calculated to excite the Opposition arising from the more powerful Impulse of particular and individual Interest.

OF THE PROCEEDINGS BEING EVIDENCE, AND [illegible] IN CASES CONCLUSIVE

XXVIII. The Enactment of the last Sessions, as to the Evidence in Actions by Assignees, is certainly very useful, so far as it extends; but, I think, the Principle of it may very properly be carried much further; and that where the Assignees succeed merely to the Right of the Bankrupts; it shall not be competent to third Parties to dispute the Regularity of the Commission. Where the Claim is founded upon the Bankruptcy itself, and is one which could not be available, if made personally by the Bankrupt, it would, of Course, be improper to apply a similar Provision. The Expence, the Delay, and the Failure of Justice, which, upon the present System, result from the opposite Principle, are such as must be obvious to the most superficial Observer.

The Principle which I have just endeavoured to maintain, is still more strongly applicable to the Case of Sales of real Property by Assignees; and it is highly convenient, that Purchases should not be impeded by the Necessity either of a Concurrence of the Bankrupt, or of a Proof of several Ingredients necessary to the Validity of the Commission; and I think, an Enactment, that in all Cases of Sales by Assignees of Bankrupts, the Commission and Assignment should be sufficient Evidence of the Bankruptcy, and that the Title so far as depending upon such Bankruptcy should not be called into Question by the Bankrupt, or any Person claiming under him; with the other Provision, which I have last alluded to, would be the fair and proper Compensation for the Adoption of the other Proposal which I have suggested, of not admitting an Act of Bankruptcy to affect the Title of the Bankrupt, unless

[* This Observation was applicable to the first Edition of the Letter in 1810. My subsequent Reflection upon the Subject has rather confirmed than weakened the Opinion which is there expressed.]

followed within a limited Time, by the Application for a Commission.

OF SEVERAL COMMISSIONS AND OTHER PROCEEDINGS AGAINST UNCERTIFICATED BANKRUPTS.

XXIX. You must, of Course, Sir, be fully aware of the numerous Inconveniences which arise from the Law that a second Commission cannot issue against a Bankrupt, not having obtained a Certificate under a first, that he may remove to a distant Part of the Country where he is unknown, and that Persons who have trusted him to a large Extent, may be greatly injured by their Ignorance of his real Situation; this Part of the Law is greatly repugnant to the Principle of the Statute of James, which attaches the Property in Case of Bankruptcy to the apparent Ownership. It rather appears to me, that the proper Relief would be given by the following Provisions:—that a second Commission should not bein valid by Reason of the Bankrupt not having obtained a Certificate under the first;—that all Property of which the Bankrupt is the apparent Owner at the Time of the second Bankruptcy, should belong to the Assignees under that Bankruptcy; that the same Provision should be extended to all Debts accrued to the Bankrupts, and not *bona fide* sued for by the Assignees under the former Bankruptcy, before the Occurrence of the second;—that no Execution should be deemed illegal in Consequence of the Party being an uncertificated Bankrupt. These Provisions would preserve to the first Assignees the Right of attaching the subsequently acquired Property, so far as related to the Bankrupt himself and all Persons claiming beneficially under him; while it would prevent subsequent Creditors from being misled by that Appearance of Property which the Assignees have suffered the Bankrupt to hold out, and which, except in the Case of a second Bankruptcy, is very seldom indeed resorted to by the Assignees under the first.*

OF THE CERTIFICATE.

XXX. One of the first Topics to which I adverted, was the Benefit derived to the Bankrupt by a Liberation from his Engagements, in Consequence of making a fair Surrender of his Property, to the Satisfaction of his Creditors.

I think, it would be no Means eligible to introduce into this Part of the System, any Thing that might diminish the Right which the Creditors have, to exercise a free and unbiassed Judgment upon this Subject. I think it very fair and reasonable, that a considerable Proportion of the Creditors should be regarded for this Purpose as representing the whole; the particular Adjustment of that Proportion, in the Nature of the Thing, must be arbitrary,—and no particular Reasons can be

[* See the Discussions upon this Subject, ex-parte Lees, 16 Ves. 472, exparte Storks, 2 Rose, 179, 3 V. and B. 105, and the Cases there cited. These Cases fully evince the Inconvenience arising from the present State of the Law, and the Importance of making some legislative Provision upon the Subject in Question.]

stated for the exact Preference, as three fifths, three fourths, or four fifths; but, so far as I can Speak, from any Experience or Observation upon the Subject, I think, that Facility in granting Certificates is a much more prevalent Circumstance than Austerity in refusing them;—and this without any Reference to any high flown Principles of Benevolence, upon the more ordinary Consideration, that the Party, on the one Hand, is assailed by constant Importunity, while, on the other, he sees no immediate Prospect of individual Benefit, and feels no particular Interest in those public Motives which would induce greater Caution in avoiding a State of Bankruptcy, if a more rigid Enquiry were to precede the Act of Liberation.

The cant Expression,—it is hard that a Man, *who has given up his all*, shall be Subject to any further Pursuit, is, on the first Statement, extremely plausible; but it is not immaterial to enquire by what Means that *all* so frequently comes to be so insignificant,—whether by real Misfortune, which no Prudence or Industry can prevent; by a certain degree of Remissness and Indolence, which though in some Degree deserving Reproof, may be exempt from any great Severity of Censure; by a wanton Course of Dissipation and Extravagance; by bold and adventurous Speculations, as uncertain as the Chance of the Hazard Table, where the Gain is on the Side of the Player, but the Chance of Loss is at the Risque of those whose Property is improperly ventured as the Stake; or whether it is accompanied by the still more reprehensible Practice of opposing the Delays and Chicanery of the Law, to the fair Demands of Creditors, wasting the Funds which in Justice are applicable to their Relief, on the one Hand, and loading them with the great additional Loss arising from the Expence of Litigation, on the other; lastly, whether the Case is subject to the Imputation of obtaining a fraudulent Credit when standing on the Verge of the Bankruptcy, for the Purpose of a momentary Respite, or to transfer the impending Loss from a Favourite to a Stranger.

It should be recollected, that a Person in obtaining Credit, pledges not only the actual Property which can be attached under a Commission of Bankrupt, but his Faculties, his Talents, his Industry, his personal Security, referring himself, in Case of Accident or Misfortune to the Approbation of his Creditor, and to the Confidence, that in the general Order of Society, a Creditor will not incur a heavy personal Expence for the merely gratifying a Spirit of Revenge at the Feelings of Disappointment, arising from the inevitable Misfortune of his Debtor.

The moral Obligation of discharging Engagements, from which a legal Discharge has been obtained, is often insisted

upon, and is in itself sufficiently obvious; but it is notorious, that a due Regard to the Performance of this Obligation is so far from being in the ordinary and accustomed Course of Things, that where it happens actually to take Place, it becomes recorded as a singular and conspicuous Instance of Integrity.

Upon these Considerations, I cannot but repeat the Impression, that any Thing which would defeat the free Option of the Creditors, in the Exercise of their Power of Assent or Dissent, would be injurious to its general Consequences. The withholding the Certificate should not be regarded as a Wrong and Injury; the Assent to it should not be exacted as a Right, but conferred as a Favour, and a positive Testimony of Approbation. If the Person, who by his unwarranted Speculations has occasioned the Ruin of another, shall have a Right imperiously to call upon him to concur in his Liberation, or to sustain a considerable Expence in adducing particular Reasons to the Contrary, and those Reasons capable of judicial Examination, which may often be impossible in Cases of the greatest real Hardship and Cruelty, the Order of Things is reversed, and the strongest Incitement to Diligence and Circumspection in avoiding the Occasion of Ruin or Detriment to others, or to Fairness and Activity in diminishing, as far as possible, the Extent of that Detriment, is removed and destroyed. Persons of Talents who can, at Will, command pecuniary Resources, may, by consuming their Acquisitions as fast as they arise, set the industrious Mechanic, by whose Labours they have subsisted, at Defiance. Cases of Hardship and Oppression will, doubtless, not unfrequently occur upon the opposite System; but the frequent Declarations publicly made by those who have the fairest Opportunities of acquiring an adequate Knowledge upon the Subject, that the Number of oppressive Creditors bears a very insignificant Proportion to that of fraudulent Debtors, concurring with the Nature of the Thing, and the probable Motives of Action, renders it highly necessary, that a most serious Pause should be made, before a Measure is adopted, upon limited Views of particular Commisseration, which may have the Effect of removing the most powerful Motives by the Exercise of that Line of Conduct which is dictated to Justice and Integrity, and creating a greater Degree of Misery and Oppression than any which it professes to relieve.

On the other Hand, I think it by no Means desirable, that the free Discretion of the Creditor in assenting to a Certificate, should be checked, or that any Severity of Disapprobation should be expressed at exercising that Discretion at as early a Period as it is legally competent to do so; at a Period in which, from the constant form of public Notification of

the Bankruptcy, it may be inferred that the Discretion was originally intended to be exercised. And I will here submit to the Consideration of the Creditors themselves, the Fallacy and Impropriety of regulating their Conduct in this Respect, by any uniform Rule founded upon the Time or Amount of the Dividend: the Object of Consideration in the granting or withholding a Certificate, is the Fairness and Integrity of the Bankrupt, and not the accidental Diligence or Remissness of the Assignees, or the casual Proportion between the Debts and the Estate; that a very large Dividend may be produced under Circumstances of the greatest Dishonesty; that a total and absolute Wreck of Property may take Place, without the slightest Imputation of Fraud, or even of Neglect.

From the whole Tenor of the preceding Observations, you will perceive, Sir, that the Impression of my Mind is in Favour of the Continuance of the Law as it stood previous to the last Alteration. Aware that in this View of the Subject my Sentiments are in Opposition to those which you have already submitted to the Legislature, I have expressed them with that Freedom which is calculated to shew the strong Bias of my Opinion, but submit them to your Consideration with unaffected Deference and Respect.*

PARTNERS

XXXI. 1. There is no Part of the Law of Bankruptcy which requires a more attentive Consideration than that of the proper Arrangements in the Case of there being joint and seperate Debts. The Balance of Propriety may perhaps be in Favour of refusing to admit seperate Creditors to a Share of the joint Property, except in Case of a Surplus, as that is founded upon a reasonable Analogy to the Operation of the Law where no Bankruptcy takes Place; but it will not necessarily follow, that the reverse of this Doctrine, by which joint Creditors are in general excluded from a Share of the seperate Property is to be

[* In Note 31 to Stat. 5, Geo. 2, Ch. 30, supra, p. 105, I noticed that it had been frequently stated by Lord Eldon, that any Misconduct of the Bankrupt previous to his Bankruptcy, is not a Ground for staying the Certificate—"The Law says, that the Certificate shall be affected by Misconduct not before the Bankruptcy, but in the Bankruptcy, ex-parte Anderson, 1 Rose, 93." I have over and over again said, and am anxious to repeat it, that neither the Great Seal nor the Commissioners can withhold the Certificate for Misconduct, unless upon Misconduct under the Bankruptcy, and for Nonconformity to the Bankrupt Laws, ex-parte Gardner, 1 Rose, 377."

In the late Proposal for a Committee for the Consideration of the Bankrupt Law, which was made a short Time before the End of the Session that has just expired, (July, 1817) the Importance of the Measure was urged on account of the small Amount of the Satisfaction which the Creditors usually receive. It may deserve Consideration whether it would not be desirable to invest the Great Seal with a Power of withholding the Certificate in the Cases in which, by Stat. 56, Geo. 3, Ch. 102, (Part 4 adduced) Defendants are precluded from the Benefit of the General Insolvent Act.]

supported, as that certainly is in Opposition to the Analogy already mentioned; and perhaps the fairest Principle in Case of Bankruptcy, is to consider the Commission as giving such a Right of Distribution in Respect of the same Classes of Property, as would, so far as the Nature of the Subject will admit, result from the Common Law Process of Execution, according to which a joint Creditor has a Right against the seperate Property, but a seperate Creditor has only a Right to such Interest in the joint Property, as upon a fair Adjustment of the Accounts could be claimed by the Bankrupt himself: and it should be recollected that the Credit obtained by a Partnership, is often founded, not so much upon a Consideration of the Capital which it may be necessary immediately to invest in the Concern, as upon the known personal Opulence of the several Individuals who compose it. It is true that, on the other Hand, an Individual may obtain Credit in his private Capacity, by its being known that he is the Member of a Partnership reputed to be in a flourishing Condition; and that Consideration may therefore apply in Respect to the Admission of the seperate Creditors to a Participation in the Funds of the joint Estate; but still there may be Reasons militating against the Participation of the Nature alluded to, which do not extend to the Exclusion of the joint Creditor, in the Case of the separate Estate; at any Rate it is very desirable, that the Subject should be discussed with that Fulness of Attention which is commensurate to its Importance.*

2. Whatever may be the Conclusion upon that Part of the Subject, it seems that there can be no Equity in preventing

[* I have often heard an Idea suggested by a Gentleman, the Accuracy of whose Judgment renders any Observation proceeding from him, worthy of Attention, that the proper Basis of Distribution, in these Cases, would be, to divide the joint Estate into as many Portions as there are Partners, equal or unequal, according to their respective Shares in the Concern; and for the joint Creditors of the Concern to have a Claim, in Common with the respective Creditors of each of the Partners, upon the several Funds which are constituted of the Aggregate Amount of the seperate Property of each Partner, and of his Share in the joint Estate, proving upon such Fund, in Proportion to the Share of the respective Partners in the joint Estate. And a System, founded upon this Idea, although certainly rather complex in its Operation, would, apparently, be very comformable to the real Principles of Justice and Equity upon the Subject. The same Observation has since suggested itself to Mr. Christian as expressed in the following Passage: "Each Partner ought to pay his own private Debt and his Share of the joint Debt; the Effects he has to pay withal, are his seperate Estate, and his Share of the joint Estate. Every joint Creditor ought therefore to prove a joint Proportion of his Debt under such Partners' Estate, and take a Dividend with the seperate Creditors from the Aggregate of the seperate Estate, and the Share of the joint." He proceeds to observe, that the Surplus of each Partner still ought to be applied to make up the Deficiency of the other Funds—which is certainly correct.]

the taking the Accounts between the joint and seperate Funds, as they would have been between the Estates of Persons distinct and unconnected. I am aware, that any Arrangements for this Purpose, would often be attended with very considerable Trouble and Inconvenience to those engaged in the Execution of Commissions; but, if the Arrangements are such as are required by the Principles of Justice, they cannot fairly be opposed upon the Ground of personal Inconvenience.* If it be in itself just, that a seperate Estate should have a Claim upon the joint Funds, in Respect to the Balance which would be due to the seperate Partner in a Case of Solvency; and it be also just, that a joint Estate should have a Claim upon the seperate one, for such Demands as would, in Case of Solvency, be competent to the Firm, against the Individual, it must be admitted. on all Hands, to be desirable, that such a Disposition should take Effect, under all Circumstances:-- for there would be a Perversion of Terms in asserting, that a System founded upon Justice could be otherwise, than desirable in the general Order of Society:--and it would be a great Violation of Propriety to maintain, that a Variation from Justice, in one Respect, is of no material Detriment, provided it is counterbalanced by a similar Deviation from Justice in the other; for applying Injustice alternately to Creditors of the one Description, and the other, cannot, upon any Principle of fair reasoning, be considered as equivalent to rendering actual Justice upon the whole. But, I conceive, that this View of the Subject is not uniformly taken, and that the Notion of mutual Compensation is by no Means unfrequently entertained. It should, however, be recollected, that Compensation to have the Character of Justice, should take place in such a Manner that the Individuals who sustain the Loss, should be the same who are compensated by the Gain; and it is no Satisfaction to a Party who is deprived of what fairly belongs to him, to be told that another Person, in Consequence of the Adoption of the same System, will have an Advantage beyond what he is entitled to This Argument is placed in its strongest Point of View by the admirable Considerations of the Chancellor D'Aguesseau upon the Subject of Money, in which, when at the Head of the State, he strenuously opposed, (at the Hazard, and with the Consequence of personal Disgrace and Punishment), the Ob-

[* Mr. Christian has traced, Vol. 2, pa. 246, &c. the History of the Law, that the joint Creditors shall be first paid out of the Partnership joint Estate, and the seperate Creditors out of the seperate Estate of each Partner. After saying it is sometimes called a Resolution of Convenience, he adds—" to whom, perhaps to the Lord Chancellor and to the Commissioners of Bankrupt. It might be just as convenient to them if the whole of the Bankrupt's Property was distributed among the Creditors by a Lottery as by an equitable Rate according to the Quantity of their Debts.]

ject of his Master in giving a fictitious Value to the Coin, and combatting with irresistable Arguments the Opinion of those who conceive that a Creditor suffers no Injustice by being compelled to receive Payment of what he has lent in Money of less Value: because upon a Restoration of the Coin to its proper Standard, Debtors will be obliged to pay at the greater Rate what they have received at the less, and that therefore the Loss of the Creditors at the one Period, will be compensated by the Loss of the Debtors at the other.*

2. I conceive that while the general Rule subsists, that the seperate Creditors shall be exclusively entitled to the seperate Estate, there will not be many Advocates for the Continuance of the special Exception of a Case in which there is not any joint Property. In arguing upon the Propriety of the Exception, the Propriety of the general Rule must be taken for granted for if that is assailed, the proper Remedy is not the Creation of Exceptions, but the Subversion of the Rule. I must therefore assume the Rule to be settled, not merely as a Matter of Practice, but as a Principle of Justice, that in general Cases the seperate Property is the exclusive Fund of the seperate Creditors. The holding that if a Person has any the smallest Fund of his own, he shall have no Claim upon the Funds of another; but that if he has no Funds of his own, he shall be admitted to claim upon the Funds of that other to an indefinite Extent; that if a joint Creditor for £10,000 has a joint Fund of 10s. he shall not Share with seperate Creditors upon a Fund of £100, which may be supposed equivalent to the Payment of their Debts; that the same Rule shall be applied, if the Shillings are reduced to Farthings; but that upon the mere Distinction of there being a Farthing† or not, he shall

[* Ruled ex-parte Elgar, 2 Rose, 175, that a solvent Partner having paid all the Partnership Debts is entitled to prove what the Bankrupt Partner is thereby indebted to him under his Commission.]

[† The Doctrine that there can be no Proof between the joint and seperate Estates for what a Partner has drawn out or put in more that his own Share, was established by Lord Thurlow, in the Cases ex-parte Burrell, ex parte Parker, ex-parte Pine, ex parte Grill, ex-parte Batson, reported in the 13th Chapter of Cooke's B. L. (in Opposition to preceding Authorities upon the Subject). The Ground for not admitting a Proof by the joint upon the seperate Estate, because the Bankrupt cannot be in Competition with his joint Creditors—is certainly not very satisfactory, and there is no pretence for applying any such Rule against the joint Creditors where the Individual Partners are Debtors to the Partnership, but when the Money is taken by one Partner by Fraud, and without the Knowledge or Consent of the other, Lord Thurlow held (ex-parte the Assignees of Lodge and Fendal, 1 Ves. Jun. 166) that if the Partnership Property was applied by a Partner to his own Use by Fraud and without the Consent of the other, there might be a Proof on Behalf of the joint Estate, which Doctrine is admitted by Lord Eldon in ex parte Harris, 1 Rose, 129 - 437. In this Case the Proof on Behalf of the joint Creditors of Ramsey and Aldrich on the seperate Estate of Aldrich,

sweep away the whole of the £100, with the Exception of the 100th Part left for the seperate Creditors, is, upon the Face of it, so grossly and palpably absurd, that I believe very few Persons indeed have been found to argue in Support of it. I regret that this has not been considered as a proper Subject for judicial Correction: I am as well aware as any Person can be of the Inconvenience of a constant Fluctuation in the Administration of Justice, and of the Benefit of adhering to settled and established Principles; but I have ever maintained that these Considerations, although important, are only secondary, and that they should not be retained at the Expence of a constant Sacrifice of Justice and Propriety, under Circumstances where the general Inconvenience of adhering to an erroneous Principle, will be evidently greater than that of correcting it.

3. The further Distinction, by which the Right of proving upon the seperate Estate of a Bankrupt is restrained in the Case of there being a solvent Partner, does not seem to me to rest upon a much better Foundation than the Doctrine which I have last examined. Before I proceed to the few Observations which I have to submit upon the Distinction now referred to, it may not be amiss to notice incidentally, that the Term, SOLVENT, is not always applied with very great Precision, and that it is not distinctly ascertained, whether it means a Person of actual and undisputed Property—one who is in the regular Course of satisfying his Engagements—or whether it also extends to a Person of suspicious Circumstances keeping clear of a Commission of Bankruptcy, but keeping his Creditors at Arm's length, by all the Instruments of Delay which the Law can supply. But I am willing to suppose the Party to be Solvent, in the fullest and most unequivocal Sense of the Expression; and, as assuming that Supposition, I cannot admit, that

was disallowed, the L. C. saying, "*If Ramsey knowingly acquiesced in what necessarily gave to Aldrich the whole Controul over his Property, he must abide by the Consequence of his own Conduct.—Although therefore, the Money may have been taken without the Knowledge, Privity, Consent or subsequent Approbation of Ramsey, yet the Facts by which Aldrich was so enabled to possess himself of it, were Facts within his Knowledge, Privity, Consent and Approbation; and therefore, the Consequence of those Facts must also have been within his Knowledge and Will, his Privity, Consent and Approbation.*—When one or more of the Partners carries on a distinct Trade, Proofs may be made of the Transactions between the respective Concerns as if they were Strangers. See ex-parte Johns, Cooke, 565, ex-parte St. Barbe, 11 Ves. 413. So where one sole Partner buys Articles of himself and Partners, and becomes Bankrupt, the other may prove on Behalf of the Firm, ex-parte Hesham, 1 Rose, 146.]

[* In ex-parte Peake, 2 Rose, 54, the Proof of the joint Creditors upon the seperate Estates, was disallowed, there being joint Effects to the Value of £1 11s. 6d. Where joint Creditors under an Order to prove against seperate Estates, prove against one or more of them exclusively of the rest, the Estate so burthened is entitled to Reimbursement from the others, ex-parte Wilcock, 2 Rose, 292.]

there is any Thing resulting from it, which warrants the Adoption of the Rule at present under Consideration. If the Dividend upon the separate Estate amounts to more than what the Bankrupt, upon a fair Adjustment between the Parties themselves, would be bound to contribute, the Claim of a Compensation still exists, and there is no Impediment to enforcing it; but, if the joint Funds are extinct or insufficient, the Contribution must be equally made, where there is no Insolvency, between the several Parties, according to their respective Shares; and there is no Principle, upon which the Accident of one of such Partners being insolvent, should give an adventitious Benefit to his Creditors that would not belong to the Insolvent whom they represent, by the Detriment, and at the Expence of the other Partner who is solvent. So far as the Claims of the Creditors of the Co-partnership are concerned, the Liability of each of the Parties is a proper and necessary Principle; but the subjecting one Partner to a Loss, for which he is not originally liable, for the Sake of giving the Creditors of the other the Distribution of a greater Property than actually belongs to the Person to whose Rights they have succeeded, cannot be reconciled with any Principle of Reason or Justice. There is Something fallacious in a Comparison of this Case, to the marshalling of the Assets of a Person deceased; by which each Estate bears the Charges to which it is liable, so as to prevent the Claims of any Class of Creditors from being disappointed. This proceeds upon the fair and just Ground of preventing Parties claiming merely under a gratuitous Title, from being preferred to those who have a Claim of Justice upon the Property of the Deceased, and cannot, with any Propriety, be extended to the rendering one Man liable for the Debts of another, as every Partner is rendered, who is called upon to contribute more than his proportionate Share in Favour of the separate Creditors of his Companion. The Terms Debtor and Creditor, in their large and derivative Signification, and according to which they are used in some Systems of Jurisprudence, refer to the whole Compass of Rights and Obligations; and, according to that View of the Subject, the Obligation of one Partner to protect his Companion from paying more than his proportionate Share, is as much a Debt as the Loan of a Sum of Money, and should, as far as the Nature of the Subject will admit, receive the same Assistance and Relief, upon a Distribution of the Effects, in Case of the Insolvency of the Debtor. For all beyond his own Share, the Partner is, as to his Companion or the separate Creditors of that Companion merely a Surety, and should have the same Relief, by the ancient Bankrupt Laws, under the Proof of the Creditor, or, according to the late Alteration, upon his own Proof, as any other Surety whatever. This View of the relative Characters of Partners as

Principal and Surety, was accurately taken in the Case of Wright v. Hunter, 1 East, 20, in which it was held, that a Partner was not protected by his Certificate, in Respect of his Share of the joint Debt paid by his Companion after the Bankruptcy.

4. I think it is very desirable, that under a joint Commission, there should be, as a Matter of Course, a Liberty of choosing separate Assignees of the Estates of the different Partners, or of the smaller Firms of which the Partnership is composed: for the merely keeping separate Accounts by no Means meets the Exigency of the Case.

The practical Principle to which I so often advert, that Men will not in general upon a mere Sentiment of Duty, pay the same Attention to the Interests of others, which they do to their own, however inadmissable in the Republic of Plato, forms a very material Ground of Consideration in a Revision of the Bankrupt Law, adapted to the actual State of Human Society; and applying that Principle to the Case in Question, there are often very intricate and important Subjects of Attention on Behalf of separate Creditors, with which the Creditors of the joint Estate (whom the Assignees may be fairly considered as representing) have not the smallest Interest or Concern; and if they do happen to devote to the Subject that prompt and lively Attention which is calculated to produce a beneficial Effect, the Fact must be rather imputed to the individual Qualities of the Persons than to the Nature and Constitution of the Thing. It is true that the Activity of the Assignees may be sometimes excited by the Interference of separate Creditors; but even here the Probability of any Individual Creditor exerting himself without any particular Motive, for a general Purpose in which he has but a small comparative Interest, and which is as much the Business of B, as of A, and of Z as of B, is not very considerable: it is mending the Bridge at an Individual Expence, for the Benefit of all the Glen.*

But, further, the joint and separate Creditors have frequently Interests which are not only distinct, but opposite and conflicting; and it cannot be supposed that they stand an equal Chance of Justice, when the one is represented by an efficient Agent, and the other is left to the Influence of accidental Penetration and Exertion. I do not so much refer to Questions of joint and separate Property which can be adequately provided for by mere judicial Determination, as to those Cases of Conflict in which the Arrangements of Business that no judicial Superintendance can controul, may promote the Advantage of the one Estate, to the Prejudice of the other.

Neither should it be overlooked, that it is not the Number

[* Cottagers of Glenburnie.]

of Partners which determine the relative Importance of the Estates ; a Trader engaged in extensive Concerns, may find it more expedient to have rather a Partner than an Agent in some detached and subordinate Establishment ; and it can by no means be desirable, that the one, should be controuled and directed by Persons whose only Interest is in the insignificant Transactions of the other.

A remarkable Instance to which these Observations might be applied, occurred in the great Bankruptcy of Livesey, Hargreaves, Anstie, Smith, and Hall, in 1788 ; a House, the Debts of which exceeded a Million Sterling, and which had taken a Person of the Name of Swift as a Partner in some subordinate Establishment, the whole Extent of the Property engaged in which was less than £10,000 ; an Application was made to supersede a Commission against Partners in the general Concern, on Account of another Commission which had issued against them in Conjunction with the additional Partner, and was contested with great Force, the real Question being between the London and Country Creditors of the principal Concern, as to the Place of executing the Commission. From some incidental Circumstances the Case did not receive a judicial Determination, and the Commission in which Swift was not included, was proceeded in ; but suppose the Reverse had occurred, no Case could more strongly evince the Impropriety of the Rule by which the Creditors of the small Concern, of only a Hundredth Part the Magnitude of the other, could direct the Management of the whole.*

5. As a general Rule, I think it is very eligible that joint and separate Commissions should not be allowed to stand at the same Time ; but there may be many Cases in which it would be desirable to permit it, and therefore I conceive that the Functions of the Great Seal upon that Subject, should be discretionary.† Where a Person is engaged in several distinct Partnerships, the other Members of which are not mutually connected, it seems absolutely necessary that a Commission should be supported against him, in Conjunction with each Set of Partners ; and such Commissions are, in Fact, often proceeded in.‡

[* In ex-parte Miles, 2 Rose, 66, the L. C. said, In Cases where Creditors are in Respect of their Interest misrepresented under a Commission as in the Case of separate Creditors who have no Right to Vote in such Choice under a joint Commission, or of joint Creditors who have no Right to vote under a separate Commission, the Court in a Case requiring it, will appoint a Person as an Agent or Inspector, with ample Authority, to take Care of their Interests, and will provide for his Reimbursement and Indemnity in Point of Expence, out of the Estate, in as full a manner as if he were actually an Assignee; and see ex-parte Basarro, 1 Rose, 266.]

[† See ex-parte Mason and others, 1 Rose, 425; ex-parte Brown, 1 V. and B 60.]

[‡ I am now inclined to think that the Commissions would not be held to be legally valid.]

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GENERAL OBSERVATIONS.

XXXII. I by no Means offer the preceding Observations as the Result of a general Review of the extensive Subject to which they relate. The Time which has elapsed between my receiving an Intimation of the Rumour to which I first alluded, and that in which any Suggestions of my own can be offered, with any Hope of their being attended with a practical Effect, has been much too limitted to admit of the Examinations that would have been requisite for the Execution of so comprehensive a Design. It was my Wish to have presented you with the Observations that have occurred to me previous to the Meeting of Parliament, but other Avocations have prevented my carrying that Wish into Effect; being impressed with the Importance of avoiding any Delay that might be prevented, so far as I may be admitted to attach the Attribute of Importance to my own Communications, I have probably omitted several Topics which would have presented themselves to me upon a more minute and particular Investigation; the Observations which are now laid before you, are principally such as have been the Result of long and frequent Consideration (and in some of which you may probably recognize the Ideas of a former written Communication), accompanied by a few others that have incidentally presented themselves to my Attention in the Course of my Progress.—I am aware that with more Preparation and with greater Leisure, I should have presented them to you with an Arrangement more satisfactory to myself than that in which they at present appear; and am conscious in some Instances of a Diffuseness of Expression which I should have been desirous to correct.

With Respect to the Substance of the Observations themselves, I am far from entertaining an implicit Confidence in their Propriety and Correctness; but although I may have omitted to express myself in each individual Instance in a Manner that would sufficiently indicate a Submission of my individual Sentiments to the Consideration of superior Abilities and Experience, I have no Difficulty in making the general Declaration, that such is the Object and Purpose of my Address; and I trust that that Object has not been departed from by my giving such a Freedom to my Expressions as will most effectually communicate the Course of my Reflections.

In repeating my Wish that you may not consider the Purposes of your Interposition complete without entering into a general and systematic Review of the Subject under Consideration, I will take the Liberty of adding, that I do not conceive that it will be necessary in order to effectuate that Purpose, that all the Provisions should be settled at one Time, and incorporated in the first Instance in one Act of Parliament, but that the Purpose will be effectually answered by a successive Distribution of the several Parts of the Subject,

according to a regular Series, in different Acts of Parliament; which, if it is afterwards found expedient, may be combined and incorporated together. But I certainly think it important that the new Provision shall in every Stage of the Proceeding, contain a complete and perfect Exposition of the Parts of the Subject to which it relates, to the Exclusion of all statutary References to preceding Enactments, applicable to the same Branch of Division, and without affecting to lay down an actual Plan for the Execution of my Idea in this Respect shall subjoin an Enumeration of Subjects by which it may be in a considerable Degree illustrated. I. The Cases in which a Commission may issue in Respect, 1, to the Person who is the Object of it. 2, To the Causes of issuing it (a) compulsorily (b) upon voluntary Cession. II The Commission itself and the Proceedings under it. 1, The Persons to whom it shall be directed. 2, The Appointment and Advertisement of Meetings, with the Power of Enlargement. 3, The Proof of Debts. 4, The Admission of Claims. 5, The Expunging of Proofs. 6, The Choice of Assignees. 7, The removal of Assignees. 8, The Choice of new Assignees. 9, The Execution of the Assignment. 10, The Surrender and Examination of the Bankrupt. 11, The Power of committing the Bankrupt. 12. The Power of examining and committing other Persons 13, The Assignees' Accounts. 14, The Charges. 15, The Dividend. 16, The Bankrupts' Allowance. III Of Offences relating to the Execution of the Bankrupt Laws. 1, By the Bankrupt. 2, By others with their respective Punishments. IV. Of the Tribunal having the superintending Jurisdiction in Cases of Bankruptcy, with its particular Modifications, whether according to the present System, or the Alteration suggested. V. The Operation of the Bankruptcy upon the Property of the Bankrupt, and others. VI. The Certificate. 1, In what Cases to be granted. 2, For what Reasons it may be opposed. 3, Its Effects. 4, Cases which render it invalid. VII. Of Bankruptcy in the Cases of Partners. 1, Of a Commission against all the Partners. 2, Against two or more of a greater Number, if such Commission should be admitted. 3, Against one of several Partners, with the Manner of distributing the Property in the several Cases which may occur. VIII. General Regulations and Provisions not contained in any particular Division.

I should have wished, Sir, if I had not thought the pressure of Time a material Object to have made a full and minute Comparison between the Bankrupt Law of England and that of Scotland, with Respect to every Part of the System, in the same Manner as I have in the beginning of my Address alluded to it in some leading particulars; but from the Rapidity with which I have been obliged to proceed, in order to accomplish

as nearly as might be my principal Purpose, of submitting my Observations to you before the Period when any Interposition might be less convenient, if allowed to be at all admissable; I have been obliged to decline making the necessary Researches, to enable me to do so; but cannot too strongly press the Experience of instituting such a Comparison, not merely by a perusal of the positive Enactments and Regulations upon the Subject, but by an extended Inquiry from those best competent to furnish adequate Information, with regard to their actual Operation and Effect; so that without unnecessarily adopting a Principle of mere servile Imitation, recourse may be had as far as collateral Circumstances will admit, to such Provisions as have been practically found to be attended with real Benefit and Utility.

XXXIII. The same Pressure of Time, to which I have already alluded, prevents my availing myself (as I originally intended) of the Opportunity of submitting to your Consideration several detached and unconnected Observations upon different Subjects, which I conceive it would be desirable to render the Object of legislative Inquiry,* and upon which it is probable that I may, at a future Period, again present myself to your Attention, although other Engagements,† which will speedily be announced to the Public, will oblige me, for some Time, to defer the carrying any such Idea into Execution.

I shall, however, trespass so much farther upon your Patience, as to make a few general Observations connected with the Object which I have just mentioned.—It is notorious that while many Persons are disposed to recommend a frequent and general Revision of the Laws of a Country as an entire System, others regard any Interference as an improper Innovation, and recommend being satisfied with Things as they are, as our Fathers have been before us—but that mere Legislation for the sake of Legislation, without any adequate Motive of Utility in the particular Instance, and that an Adherence to existing Institutions when a Revision and Alteration would be productive of material Benefit in their general Effects, are equally contrary to the Decisions of Reason; must be obvious to every reflecting and unprejudiced Mind.

Many positive Institutions adapted to one State of Society, must necessarily, become inapplicable to another, so as to produce particular Inconveniences without any Motive of adequate Benefit; many Regulations must have been introduced

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[* Many of the Suggestions then contemplated have been introduced in the present Work.]

[† This alluded to a Translation of the Code Napoleon with Notes, the Completion of which was prevented by the Appearance of such a Publication by another Gentleman.]

upon erroneous Ideas of the true Principles of political Economy, which a more enlarged Investigation of that important Science may render it proper to correct; many Laws of a useful and beneficial Character in their general Operation, may have particular Inconveniences, which can be sufficiently obviated without infringing upon the Principles of the Laws themselves; a too extended or too restricted Interpretation of particular Laws, may have defeated their real Purpose, and have produced an established System of Exposition, neither conformable to the real Intention of the Law, nor calculated to promote the Advantage of the Public; legislative Provisions, or judicial Determinations upon partial and incomplete Views of analogous Subjects, may have occasioned Contrariety and Repugnance where the Interest of Society may require Conformity and Accordance; for many Subjects of Magnitude and Importance, the general Tenor of the Common Law, may afford an inadequate Provision, and a proper Remedy can only be applied by specific and positive Regulation--an Enumeration which might be much extended, and would still remain defective and imperfect of the Objects which fairly solicit and invite the Attention of Persons who feel a real Interest in the Promotion of useful Legislation.

However justly we may be entitled to boast of the Pre-eminence of our Laws, and the Excellence of their Administration, it cannot be disputed that the Disposition to extend their Benefits by supplying their Deficiencies, is by no Means prevalent or conspicuous; and that the numerous Additions to the actual Mass of Legislation advance with a progressive Accumulation, which bears an inverse Proportion to the Subjects of general Interest that are included in them; and that never were the Provisions that become incorporated with the juridical System of the Country, less numerous and important, than while the mere extent of the Legislation upon Subjects of limited Importance has been increasing beyond the Example of any former Period, and I fear that a very inadequate Answer would be given to this Observation by alleging that the Reason of the Alterations of a different Nature being so few, is the Existence of a State of Excellence and Perfection which renders them unnecessary

To mend the Law, as well as *"to mend the world,"* is certainly *"a vast design,"* but much more may be effected towards it, than upon a superficial Consideration would be supposed. From those who are extensively engaged in official or professional Avocations a Sacrifice can hardly be expected of that Degree of Time and Attention, which would be requisite for effectuating the Objects to which I have alluded upon a general and extensive Scale, but much indeed may be effected by Persons of this Description attached to so desirable an

Object, applying their Weight and Influence to excite the Exertion of others for a similar Purpose, and promoting the Establishment of a small, but active Association of Persons actuated by similar Motives, consisting partly of Members of the Legislature, whose Rank and Influence would give Weight and Sanction to the Design, partly of other Persons equally holding a legislative Station, less conspicuous in Respect to their Elevation, but equally devoted to the same Object, and having an Opportunity of attending to it with more Minuteness and less Distraction, and partly of other Persons who have not the Honour of holding a similar Situation, but would be equally disposed to afford an active Co operation in the Promotion of so valuable a Purpose; by selecting proper Subjects of Inquiry and Regulation, by committing to particular Individuals the Charge of framing the general Outline as well as the specific Detail of the Provisions which shall be the Subject of Discussion, and by a general Deliberation upon the Plans which may be thus arranged; so that every Provision may be framed with that distinct and accurate Consideration which would warrant not only the judicial Expositor, but the rational Enquirer, as much as the Nature of Human Infirmity will admit, to argue distinctly and with adequate Foundation upon the Understanding, the Intention, the Ideas of the Legislature in the Provisions which should be adopted by the Parliament in Consequence of such Deliberations.

In the Selection of Subjects, it would be desirable to combine, in an extensive and comprehensive Point of View, the Particulars which have such an Affinity and Connection as to be properly included in the same System, and to be the Object of Regulations founded upon the same Principle and the same general Views; and to avoid the Admixture of Subjects so unconnected and heterogeneous as the Regulation of Attornies and Solicitors, and the preventing the spreading of the Distemper amongst horned Cattle (22, G. II. ch. 46) or the Introduction of a Provision that all general Laws relating to England shall extend to Wales and Berwick, in "an Act to enforce the Execution of an Act of this Session of Parliament, for granting Duties upon Windows," (20, G. 2, c. 42). In the Expression and Composition of Acts of Parliament it will be equally desirable to avoid unmeaning Generalities, such as "other like grievous Offences," a Provision for levying Penalties, "as other Penalties and Forfeitures are upon penal Statutes after Conviction, to be levied and recovered," (5, G. 2, c. 20, s. 29), with many others of a similar Nature, on the one Hand, and a minute Verbosity of Coach, Calash, Berlin, Landau, Phæton, Chariot, and Postchaise, when the whole can be fully described for the Purposes of the Act, by the general Appellation of a four-wheeled Carriage, on the other. The most